

USDA-1

UNITED STATES DEPARTMENT OF AGRICULTURE
Agricultural Stabilization and Conservation Service
Agricultural Marketing Service
Washington, DC 20250

**GENERAL TERMS
AND CONDITIONS
FOR THE
PROCUREMENT OF
AGRICULTURAL
COMMODITIES
OR SERVICES**

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GENERAL TERMS AND CONDITIONS

FOR THE PROCUREMENT OF AGRICULTURAL COMMODITIES OR SERVICES

This document contains information, representations and requirements relating to the submission and acceptance of offers made pursuant to announcements or invitations for offers which specifically incorporate this document, in whole or in part, by reference, and which are issued by the United States Department of Agriculture or Commodity Credit Corporation. Each such announcement will specify terms and conditions, in addition to those included in this document, which are applicable. References in this document to a particular regulation, or other document, shall be deemed to refer to such document as it may be revised or amended and any superseding document as of the time offers are invited.

PART A - INFORMATION FOR OFFERORS

Article 1. DESCRIPTIVE HEADINGS

The descriptive headings of the various contract terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

Article 2. DEFINITIONS

The definitions given for the following words and phrases shall apply whenever these words and phrases are used in this document and any other document which becomes a part of a contract in which any of the provisions of this document are incorporated, unless otherwise specified in the contract:

- (a) "Advertised," for purposes of the solicitation, means small business restricted advertising and other types of restricted advertising.
- (b) "Agency," means the United States Department of Agriculture (USDA) or Commodity Credit Corporation (CCC), whichever is designated in the announcement as procuring the commodity or service.
- (c) "Agency head" or "Secretary," means the Secretary of Agriculture, Chairman of the Commodity Credit Corporation, or a representative thereof unless otherwise specified.
- (d) "Agricultural commodity," means a raw agricultural commodity or a product thereof.
- (e) "AMS," means the Agricultural Marketing Service of USDA.

- (f) "Announcement," means an instrument which states terms and conditions for the procurement of the designated commodity or service. It may in itself invite offers for the commodity or service in which case it will be called "Announcement/Invitation." In other instances, it may provide for the issuance of a separate notice requesting bids and may set forth other special terms. Such separate notice will be called an "Invitation" or "Solicitation." For purposes of brevity, the term announcement as used throughout this document applies to all variations.
- (g) "Article," means one of the Articles of this document.
- (h) "ASCS," means the Agricultural Stabilization and Conservation Service of USDA.
- (i) "Business day," means a day of the week, excluding Saturday, Sunday, and Federal holidays. Unless otherwise specified, any other reference to days is on a calendar basis.
- (j) "Causes," as used in the phrases "causes beyond the control and without the fault or negligence" means, but is not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; however, in every case the failure to perform must be beyond the control and without the fault or negligence of the party to the contract seeking excuse from liability.
- (k) "The commodity," means the agricultural commodity delivered or to be delivered to Agency by Contractor or the serviced commodity produced or to be produced by Contractor from the agricultural commodity delivered by Agency to Contractor.
- (l) "Commodity Office," means the Kansas City Commodity Office, ASCS or such other office as may be specified in the announcement.
- (m) "CCC," means Commodity Credit Corporation, a wholly owned corporation of the United States within USDA.
- (n) "Contract," means the Contractor's offer, Agency's acceptance, this document, the applicable announcement and other documents incorporated by reference.
- (o) "Contracting Officer," means a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings on behalf of Agency.
- (p) "Contractor," means the person, firm, corporation or other legal entity obligated under the contract with Agency.
- (q) "FAR," means Federal Acquisition Regulation which establishes a single regulation for use by all Executive Agencies in their acquisition of property or services. Copies of the FAR may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. The FAR may be found at Title 48, Code of Federal Regulations.
- (r) "Management Office," means the Kansas City Management Office, ASCS or such other office as may be specified in the announcement.

- (s) "Offer," means the bid in formal advertising.
- (t) "Offeror," means the person, firm, corporation or other legal entity submitting an offer in response to an announcement.
- (u) "Service," means to process, package, and perform other acts under a contract with respect to commodities owned by Agency.
- (v) "Shipment," means transfer in store where the shipping instructions so provide.

Article 3. EXPLANATION TO PROSPECTIVE OFFERORS

Any prospective offeror desiring an explanation or interpretation of the solicitation, drawings, specifications, etc., must request it in writing soon enough to allow a reply to reach all prospective offerors before the submission of their bids. Oral explanations or instructions given before the award of a contract will not be binding. Any information given a prospective offeror concerning a solicitation will be furnished promptly to all other prospective offerors as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective offerors. Addresses and telephone numbers of offices to contact will be listed in the applicable announcement.

Inquiries concerning:

Shipping information shall be made to:

Director, Kansas City Commodity Office, ASCS
U. S. Department of Agriculture
P.O. Box 205
Kansas City, MO 64141

Payments shall be made to:

Director, Kansas City Management Office, ASCS
U.S. Department of Agriculture
P.O. Box 205
Kansas City, MO 64141

Article 4. PREPARATION OF OFFERS

(a) Offeror is cautioned to read this document and the applicable announcement carefully and to verify prices before submitting offers. Offerors must make their own estimates of the facilities and difficulties attending the performance of the proposed contract, including local conditions, uncertainty of weather, financial considerations, availability of materials and containers, and all other contingencies.

(b) Offeror shall acknowledge receipt of any amendment to the solicitation (1) by signing and returning the amendment, (2) by identifying the amendment number and date in the space

provided for this purpose on the form for submitting a bid, or (3) by letter or telegram as specified in the Announcement. The Government must receive the acknowledgment by the time and at the place specified for receipt of bids.

(c) Offeror must provide full, accurate, and complete information as required by the solicitation and its attachments. The penalty for making false statements in bids is prescribed in 15 U.S.C. 714m(a), 18 U.S.C. 1001, and other applicable statutes.

Article 5. DISCOUNTS FOR PAYMENT WITHIN A SPECIFIED TIME

Any discounts offered for payment within a specified time will not be considered as a factor in evaluating offers. For any discount offered for payment within a specified time, time will be computed from the date of the invoice through the date the agency issues a check or otherwise delivers payment. Payments will be made and interest paid for late payments in accordance with Article 70.

Article 6. SIGNING OF OFFERS

An offer shall set forth the full business name and address of offeror. An offer mailed, telecopied, or hand delivered shall be signed by a person authorized to execute contracts on behalf of offeror. Any offer submitted by telegram, mailgram, telex or TWX must bear the name of such person as well as that of offeror. A power of attorney or other documentary evidence of the authority for a person to execute the contract in the name of offeror may be required by Agency.

Article 7. LATE SUBMISSIONS, MODIFICATIONS, AND WITHDRAWALS OF BIDS

(a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it--

(1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th); or

(2) Was sent by mail (or was a telegraphic bid if authorized), and it is determined by the Agency that the late receipt was due solely to mishandling by the Agency after receipt at the Agency installation.

(b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) above.

(c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S. or Canadian Postal Service postmark on the wrapper or on the original receipt from the U.S. or Canadian Postal Service. If neither postmark shows a legible date, the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. or Canadian Postal Service on the date of mailing. Therefore, offerors should request the postal clerks to place a hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

(d) The only acceptable evidence to establish the time of receipt at the Agency installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation.

(e) Notwithstanding paragraph (a) above, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.

(f) A bid may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and that person signs a receipt for the bid.

Article 8. CONDITIONAL OFFERS

Any qualification or condition in, or added to, the offer may make it ineligible for consideration.

Article 9. AUTHORIZED DEVIATIONS FROM THE FEDERAL ACQUISITION REGULATIONS

(a) The use in USDA-1 of any Federal Acquisition Regulation (48 CFR Chapter 1) clause with an authorized deviation is indicated by the addition of the word "DEVIATION" after the title of the USDA-1 article.

(b) Article 28 deviates from 48 CFR 52.219-9 to permit the award of a contract prior to the submission of a subcontracting plan in order to recognize the short turnaround time between offer date and award date in commodity contracting.

(c) Article 54 deviates from 48 CFR 52.246-2 to advise the Contractor that it is responsible for inspection costs and that USDA inspectors and graders do not have the authority to amend contracts.

(d) Article 57 deviates from 48 CFR 52.247-48 to clarify the fact that the Contractor is responsible for loading and bracing costs.

(e) Article 64 deviates from 48 CFR 52.247-54 because the regulation does not refer to F.A.S. vessel as a mode of transportation which may be a required form of transportation in USDA contracts and because relying on published tariff rates which are deregulated is impractical. Article 64 (c) deviates from 48 CFR 52.247-54 because the regulation does not allow the Agency to determine the lowest cost price adjustment and does not consider transit credits which may apply.

(f) Article 68 deviates from 48 CFR 52.249-8 because the regulation does not address the issue of liability of damages caused by strikes when the Contractor's plant is on strike at the time the contract offer is submitted and the Contractor's failure to perform is attributed to the strike.

(g) Article 69 deviates from 48 CFR 52.232-23 to inform the Contractor about the various forms and information USDA requires in approving assignments.

(h) Section (h) is reserved.

(i) Article 76 deviates from 48 CFR 52.214-26 in that it waives the requirement that a Contractor submit price data information. This waiver is based on the fact that commodity prices are based on competition and/or established market prices.

(j) Article 86 deviates from 48 CFR 47.305-12(a)(2) to clarify the fact that the contractor is responsible for unloading and drayage costs.

(k) The Announcement and/or invitation provisions pertaining to submission of bids with regard to the procurement of agricultural commodities deviate from 48 CFR 52.214-13 in that USDA

waives the requirement for a confirmation copy of a telegraphic bid because of the short period of time between the submission of bids and the awarding of contracts.

(l) 48 CFR 52.214-9 does not apply because whenever an offeror submits an offer, the offeror automatically receives invitations for the remainder of the procurement period.

Articles 10-15 [RESERVED]

PART B - CONSIDERATION, ACCEPTANCE OR REJECTION OF OFFERS

Article 16. RESPONSIBILITY OF OFFEROR

Agency reserves the right to refuse to consider an offer if Agency does not have adequate information to determine responsibility of offeror, financially or otherwise, to meet contract obligations contemplated in the announcement. If a prospective offeror is in doubt as to whether Agency is acquainted with its financial responsibility, offeror should either submit a financial statement to Agency before making an offer or should communicate with the office named in the announcement to determine whether such a statement is desired. See Article 19 for information on a bid guarantee.

Article 17. PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW

An award in the amount of \$1 million or more will not be made under the solicitation unless the offeror and each of its known first-tier subcontractors (to whom it intends to award a subcontract of \$1 million or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of the solicitation. Contractor shall not enter into a first-tier subcontract for an estimated or actual amount of \$1 million or more without obtaining in writing from the Contracting Officer a clearance that the proposed subcontractor is in compliance with equal opportunity requirements and therefore is eligible for award.

Article 18. ACCEPTANCE OR REJECTION OF OFFERS AND NOTIFICATION

(a) The offers accepted will be those which are considered to be most advantageous to Agency. Factors considered in addition to price will be specified in the announcement as applicable.

(b) If an offeror is shipping late under current contracts at the time of submission of an offer, such performance shall be sufficient cause for Agency to deem offeror unable to perform and Agency may, at its option, refuse to consider the offer.

(c) Agency reserves the right to reject any or all offers and to waive informalities and minor irregularities in offers received.

(d) Agency may accept an item or group of items of any offer, unless offeror qualifies the offer by specific limitations. Unless otherwise provided in the announcement, offers shall not be submitted for any quantities less than those specified. Agency reserves the right to accept any item for a quantity less than the quantity offered at the unit prices offered unless offeror specifies otherwise in the offer.

(e) An acceptance mailed or otherwise forwarded to the successful offeror within the time for acceptance specified in the announcement shall be deemed to result in a binding contract without further action, by either party, unless the acceptance specifies or is conditioned on further action.

(f) Offerors whose offers are rejected will be notified of such rejection by collect telegram or by letter only if they specifically request such notification.

Article 19. BID GUARANTEE

(Offeror should check with contracting office identified in the announcement to determine whether a bid guarantee is necessary.)

(a) Failure to furnish a bid guarantee in the proper form and amount, by the time set for opening of bids, may be cause for rejection of the bid.

(b) The offeror shall furnish a bid guarantee in the form of a firm commitment, such as a bid bond, postal money order, certified check, cashier's check, irrevocable letter of credit, or, under Treasury Department regulations, certain bonds or notes of the United States. The Contracting Officer will return bid guarantees, other than bid bonds, (1) to unsuccessful offerors as soon as practicable after the opening of bids, and (2) to the successful offeror upon execution of contractual documents and bonds (including any necessary coinsurance or reinsurance agreements), as required by the bid as accepted.

(c) If the successful offeror, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(d) Unless otherwise specified in the Announcement, the offeror will (1) allow 60 days for acceptance of its bid and (2) give bond within 10 days after receipt of the forms by the offeror.

(e) In the event the contract is terminated for default, the contractor is liable for any cost of acquiring the supplies and services that exceeds the amount of its bid, and the bid guarantee is available to offset the difference.

Articles 20-24. [RESERVED]

PART C - PREAWARD REPRESENTATIONS, CERTIFICATIONS AND WARRANTIES

Article 25. REPRESENTATIONS AND WARRANTIES OF OFFEROR

In submitting an offer, offeror represents and warrants that:

(a) If the offer is for the sale of an agricultural commodity to Agency, (1) it is an established manufacturer of the particular commodity sought by Agency, or (2) if newly entering into such manufacturing activity, has made all necessary prior arrangements for space, equipment, and personnel to perform the manufacturing operations required for contract performance, or (3) is a regular dealer already established in a going business regularly dealing in the commodity or in the principal components of the commodity sought by Agency.

(b) If the offer is for the servicing of an agricultural commodity owned by Agency, (1) offeror is regularly engaged in providing the kind of service sought by Agency, or (2) if newly entering into providing such service, has made all necessary arrangements for space, equipment, and personnel to perform the service sought by Agency.

(c) Each end product is a domestic source end product as defined in Article 49; components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States; and each component which the announcement requires to be wholly produced in the United States was so produced.

Article 26. SMALL DISADVANTAGED BUSINESS CONCERN REPRESENTATION

Offeror shall state in the offer whether it is a small disadvantaged business concern as defined in Article 45.

Article 27. WOMEN-OWNED SMALL BUSINESS REPRESENTATION

Offeror shall state in the offer whether the concern is a woman-owned small business concern, as defined in Article 42.

Article 28. SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS SUBCONTRACTING PLAN (DEVIATION)

(Applicable to contracts which offer subcontracting opportunities and which exceed \$500,000.)

(a) This article does not apply to small business concerns.

(b) "Commercial product," as used in this article, means a product in regular production that is sold in substantial quantities to the general public and/or industry at established catalog or market prices. It also means a product which, in the opinion of the Contracting Officer, differs only insignificantly from the Contractor's commercial product.

"Subcontract," as used in this article, means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime contractor or

subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror acknowledges that it is aware of the subcontracting plan requirement in this provision; and if selected for award, will submit within 20 days or such time as specified by the Contracting Officer a subcontracting plan that will afford the maximum practicable opportunity to participate in the performance of the contract to small and small disadvantaged concerns.

(d) The subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business concerns and small disadvantaged business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs.

(2) A statement of--

- (i) Total dollars planned to be subcontracted;
- (ii) Total dollars planned to be subcontracted to small business concerns; and
- (iii) Total dollars planned to be subcontracted to small disadvantaged business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to (i) small business concerns and (ii) small disadvantaged business concerns.

(4) A description of the method used to develop the subcontracting goals in (1) above.

(5) A description of the method used to identify potential sources for solicitation purposes (e.g., existing company source lists, the Procurement Automated Source System (PASS) of the Small Business Administration, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small and small disadvantaged business concerns trade associations).

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with (i) small business concerns and (ii) small disadvantaged business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business concerns and small disadvantaged business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the article in this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$500,000 to adopt a plan similar to the plan agreed to by the offeror.

(10) Assurances that the offeror will (i) cooperate in any studies or surveys as may be required, (ii) submit periodic reports in order to allow the Government to determine the extent of compliance by the offeror with the subcontracting plan, (iii) submit Standard Form (SF) 294, Subcontracting Report for Individual Contracts, and/or SF 295, Summary Subcontract Report, in accordance with the instructions on the forms, and (iv) ensure that its subcontractors agree to submit Standard Forms 294 and 295.

(11) A recitation of the types of records the offeror will maintain to demonstrate procedures that have been adopted to comply with the requirements and goals in the plan, including

establishing source lists; and a description of its efforts to locate small and small disadvantaged business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists, guides, and other data that identify small and small disadvantaged business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small or small disadvantaged business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating (A) whether small business concerns were solicited and if not, why not, (B) whether small disadvantaged business concerns were solicited and if not, why not, and (C) if applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate small and small disadvantaged business sources.

(v) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having company or division-wide annual plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business and small disadvantaged business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business and small disadvantaged subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business and small disadvantaged business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small and small disadvantaged business firms.

(f) A master subcontracting plan on a plant or division-wide basis which contains all the elements required by (d) above, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this article; provided, (1) the master plan has been approved, (2) the offeror provides copies of the approved master plan and evidence of its approval to the Contracting Officer, and (3) goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g)(1) If a commercial product is offered, the subcontracting plan required by this article may relate to the offeror's production generally, for both commercial and noncommercial products, rather than solely to the Government contract. In these cases, the offeror shall, with the concurrence of the Contracting Officer, submit one company-wide or division-wide annual plan.

(2) The annual plan shall be reviewed for approval by the Agency awarding the offeror its first prime contract requiring a subcontracting plan during the fiscal year, or by an agency satisfactory to the Contracting Officer.

(3) The approved plan shall remain in effect during the offeror's fiscal year for all of the offeror's commercial products.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) The failure of the Contractor or subcontractor to comply in good faith with (1) the article of this contract entitled "Utilization of Small Business Concerns and Small Disadvantaged Business Concerns," or (2) an approved plan required by this article, shall be a material breach of the contract.

Article 29. LABOR SURPLUS AREA SUBCONTRACTING PROGRAM

(Applicable to contracts which offer subcontracting opportunities and which exceed \$500,000.)

(a) See the Utilization of Labor Surplus Area Concerns article of this contract (Article 44) for applicable definitions.

(b) The Contractor agrees to establish and conduct a program to encourage labor surplus area (LSA) concerns to compete for subcontracts within their capabilities when the subcontracts are consistent with the efficient performance of the contract at prices no higher than obtainable elsewhere. The Contractor shall--

(1) Designate a liaison officer who will (i) maintain liaison with authorized representatives of the Government on LSA matters, (ii) supervise compliance with the Utilization of Labor Surplus Area Concerns article, and (iii) administer the Contractor's labor surplus area subcontracting program;

(2) Provide adequate and timely consideration of the potentialities of LSA concerns in all make-or-buy decisions;

(3) Ensure that LSA concerns have an equitable opportunity to compete for subcontracts, particularly by arranging solicitations, time for the preparation of offers, quantities, specifications, and delivery schedules so as to facilitate the participation of LSA concerns;

(4) Include the Utilization of Labor Surplus Area Concerns article in subcontracts that offer substantial LSA subcontracting opportunities; and

(5) Maintain records showing (i) the procedures adopted and (ii) the Contractor's performance, to comply with this article. The records will be kept available for review by the Government until the expiration of 1 year after the award of this contract, or for such longer period as may be required by any other article of this contract or by applicable law or regulations.

(c) The Contractor further agrees to insert in any related subcontract that may exceed \$500,000 and that contains the Utilization of Labor Surplus Area Concerns article, terms that conform substantially to the language of this article, including this paragraph (c), and to notify the Contracting Officer of the names of subcontractors.

Article 30. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION

(a) The offeror certifies that--

(1) The prices in the offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in the offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a formally advertised solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2) (i) Has been authorized in writing, to act as agent for the principals of the firm in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3).

(ii) As an authorized agent, does certify that the principals named in the bid have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above; and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(c) If the offeror deletes or modifies subparagraph (a)(2) above, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

Article 31. CERTIFICATION OF NONSEGREGATED FACILITIES

(Applicable to contracts and subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity Clause.)

(a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin because of habit, local custom, or otherwise.

(b) By the submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity article in the contract.

(c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will--

(1) Obtain identical certifications from proposed subcontractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity article;

(2) Retain the certifications in the files; and

(3) Forward the following notice to the proposed subcontractors (except if the proposed subcontractors have submitted identical certifications for specific time periods):

**NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES.**

A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity article. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 15 U.S.C. 714m(a), 18 U.S.C. 1001, and other applicable statutes.

Article 32. COVENANT AGAINST CONTINGENT FEES

(a) The Contractor warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this article, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this article, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee," as used in this article, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence," as used in this article, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

Article 33. FEDERAL, STATE, AND LOCAL TAXES

(a) "Contract date," as used in this article, means the date of award.

"All applicable Federal, State, and local taxes and duties," as used in this article, means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"After-imposed Federal tax," as used in this article, means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," as used in this article, means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

(b) The contract price includes all applicable Federal, State, and local taxes and duties.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this article unless the amount of the adjustment exceeds \$100.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

Article 34. BUY AMERICAN CERTIFICATE

The offeror certifies that each end product is a domestic end product (as defined in the Article 49, "Buy American Act--Supplies"), and that components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Offerors may obtain from the contracting officer lists of articles, materials, and supplies accepted from the Buy American Act (listed in the Federal Acquisition Regulation, Title 48, C.F.R. 25.108).

Article 35. DRUG-FREE WORKPLACE

(a) Definitions. As used in this clause, "Controlled substance" means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 C.F.R. 1308.11-1308.15.

"Conviction," means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

"Criminal drug statute," means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession or use of any controlled substance.

"Drug-free workplace," means a site(s) for the performance of work done by the contractor in connection with a specific contract at which employees of the contractor are prohibited from

engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

"Employee," means an employee of a contractor directly engaged in the performance of work under a Government contract. "Directly Engaged" is defined to include all direct cost employees and any other contract employee who has other than a minimal impact or involvement in contract performance.

"Individual," means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) By submission of its offer, the offeror, if other than an individual, who is making an offer that equals or exceeds \$25,000, certifies and agrees, that with respect to all employees of the offeror to be employed under a contract resulting from this solicitation, it will--no later than 30 calendar days after contract award (unless a longer period is agreed to in writing), for contracts of 30 calendar days or more performance duration; or as soon as possible for contracts of less than 30 calendar days performance duration, but in any case, by a date prior to when performance is expected to be completed--

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about--

- (i) The dangers of drug abuse in the workplace;
- (ii) The Contractor's policy of maintaining a drug-free workplace;
- (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees for drug abuse violations

occurring in the workplace.

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this provision that, as a condition of continued employment on the contract resulting from this solicitation, the employee will--

- (i) Abide by the terms of the statement; and
- (ii) Notify the employer in writing of the employee's conviction under a criminal drug

statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notify the Contracting Officer in writing within 10 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee; and

(6) Within 30 calendar days after receiving notice under subdivision (b)(4)(ii) of this provision of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Take appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) By submission of its offer, the offeror, if an individual who is making an offer of any dollar

value, certifies and agrees that the offeror will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract resulting from this solicitation.

(d) Failure of the offeror to provide the certification required by paragraphs (b) or (c) of this provision, renders the offeror unqualified and ineligible for award. (See FAR 9.104-1(g) and 19.602-1(a) (2) (i)).

(e) In addition to other remedies available to the Government, the certification in paragraphs (b) or (c) of this provision concerns a matter within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. Also, Contractor's failure to comply with the requirements of paragraphs (b) or (c) of this provision may, pursuant to 48 C.F.R. 23.506, render the Contractor subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

Article 36. PROCUREMENT INTEGRITY

(Applicable to contracts and contract modifications in excess of \$100,000.)

(a) PROHIBITED CONDUCT BY COMPETING CONTRACTOR. - During the conduct of any Federal agency procurement of property or services, no competing Contractor or any officer, employee, representative, agent, or consultant of any competing Contractor shall knowingly--

(1) Make, directly or indirectly, any offer or promise of future employment or business opportunity to, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any procurement official of such agency, except as provided in 48 C.F.R. 3.104-6(b);

(2) Offer, give, or promise to offer or give, directly or indirectly, any money, gratuity, or other thing of value to any procurement official of such agency; or

(3) Solicit or obtain, directly or indirectly, from any officer or employee of such agency, prior to the award of a contract any proprietary or source selection information regarding such procurement.

(b) PROHIBITED CONDUCT BY PROCUREMENT OFFICIALS. - During the conduct of any Federal agency procurement of property or services, no procurement official of such agency shall knowingly--

(1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing Contractor, except as provided in 48 C.F.R. 3.104-6(a);

(2) Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing Contractor for such procurement; or

(3) Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the Contracting Officer to receive such information.

(c) DISCLOSURE TO UNAUTHORIZED PERSONS. - During the conduct of any Federal agency procurement of property or services, no person who is given authorized or unauthorized access to proprietary or source selection information regarding such procurement, shall knowingly

disclose such information, directly or indirectly, to any person other than a person authorized by the head of such agency or the Contracting Officer to receive such information.

(d) RESTRICTIONS RESULTING FROM PROCUREMENT ACTIVITIES OF GOVERNMENT OFFICERS OR EMPLOYEES WHO ARE OR WERE PROCUREMENT OFFICIALS.

(1) No individual who, while serving as an officer or employee of the Government or member of the Armed Forces, was a procurement official with respect to a particular procurement may knowingly--

(i) Participate in any manner, as an officer, employee, agent, or representative of a competing Contractor, in any negotiations leading to the award, modification, or extension of a contract for such procurement, or

(ii) Participate personally and substantially on behalf of the competing Contractor in the performance of such contract.

The restrictions in (d)(1)(i) and (d)(1)(ii) of this Article apply during the period ending 2 years after the last date such individual participated personally and substantially in the conduct of such procurement or personally reviewed and approved the award, modification, or extension of any contract for such procurement.

(2) This subsection does not apply to any participation referred to in subdivisions (d)(1)(i) and (d)(1)(ii) of this Article with respect to a subcontractor who is a competing Contractor unless--

(i) The subcontractor is a first or second tier subcontractor and the subcontract is for an amount that is in excess of \$100,000; or

(ii) The subcontractor significantly assisted the prime Contractor with respect to negotiation of the prime contract; or

(iii) The procurement official involved in the award, modification, or extension of the prime contract personally directed or recommended the particular subcontractor to the prime Contractor as a source for the subcontract; or

(iv) The procurement official personally reviewed and approved the award, modification, or extension of the subcontract.

Article 37. REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY

(Applicable to contracts and contract modifications in excess of \$100,000.)

(a) Definitions. The Definitions at 48 C.F.R. 3.104-4 are incorporated in this Article.

(b) As required by paragraph (c) of this Article, the officers or employees responsible for submitting bids shall execute the following certification:

Certificate of Procurement Integrity

(1) I, [Name of certifier], am the officer or employee responsible for the preparation of this offer and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certificate, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended, (41 U.S.C. 423) (hereinafter referred to as "the Act"), as implemented in the Federal

Acquisition Regulation (FAR) and USDA-1, occurring during the conduct of procurements under Announcement Number _____.

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that, to the best of my knowledge and belief, each officer, employee, agent, representative, and consultant of [Name of offeror] who has participated personally and substantially in the preparation or submission of this offer has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR and USDA-1, and will report immediately to me any information concerning a violation or possible violation of the Act, as implemented in the FAR and USDA-1, pertaining to procurements under Announcement Number _____.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label 1 Certificate of Procurement Integrity (Continuation Sheet), ENTER "NONE" IF NONE EXISTS)

_____.

(4) I agree that, if awarded a contract under Announcement Number _____, the certifications required by subsection 27(e)(1)(B) of the Act shall be maintained in accordance with paragraph (f) of this Article.

(Signature) _____ (date) _____

[Typed Name of above Officer or
Employee Responsible for the Offer]

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER THE UNITED STATES CODE (U.S.C.), INCLUDING TITLE 18, U.S.C., SECTION 1001 AND TITLE 15 U.S.C., SECTION 714m.

(c) The signed certification must be received by the Contracting Officer prior to the Offeror submitting an offer. Failure of an Offeror to submit the signed certificate prior to bid opening or with its offer will render the offer nonresponsive. The Offeror must reaffirm this certification in each bid submitted. Any violation or possible violations discovered or occurring after the Offeror submits the certificate must be reported on a revised certificate.

(d) The Offeror may be requested to execute additional certifications at the request of the Government. Failure of an Offeror to submit the additional certifications shall cause its offer to be rejected.

(e) A certification containing a disclosure of a violation or possible violation will not necessarily result in the withholding of award. However, the Government, after evaluation of the disclosure, may cancel the procurement or take any other appropriate actions in the interests of the Government, such as disqualification of the Offeror.

(f) In making the certification in subparagraph (b)(2) of the certificate, the officer or employee of the competing Contractor responsible for the offer may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for 6 years from the date a certifying employee's employment with the company ends or, for an agent, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(g) Certifications under paragraphs (b) and (d) of this Article are material representations of fact upon which reliance will be placed in awarding a contract."

Article 38. [RESERVED]

Article 39. CERTIFICATION AND DISCLOSURE REGARDING PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) The definitions and prohibitions contained in Article 39A and in the Federal Acquisition Regulation, at 48 C.F.R. 52.203-12, Limitation on Payments to Influence Certain Federal Transactions, included in this solicitation, are hereby incorporated by reference in paragraph (b) of Article 39.

(b) The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief as of December 23, 1989 that--

(1) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement;

(2) If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

(3) He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

(c) Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person who makes an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

Article 39A. LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS

(a) Definitions.

"Agency," as used in this article, means executive agency as defined in 48 C.F.R. 2.101.

"Covered Federal Action," as used in this article, means any of the following Federal actions:

(a) The awarding of any Federal contract.

(b) The making of any Federal grant.

- (c) The making of any Federal loan.
- (d) The entering into of any cooperative agreement.
- (e) The extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan, or cooperative agreement.

"Indian tribe" and "tribal organization," as used in this article, have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450B) and include Alaskan Natives.

"Influencing or attempting to influence," as used in this article, means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government," as used in this article, means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

"Officer or employee of an agency," as used in this article, includes the following individuals who are employed by an agency:

- (a) An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment.

- (b) A member of the uniformed services, as defined in subsection 101(3), title 37, United States Code.

- (c) A special Government employee, as defined in section 202, title 18, United States Code.

- (d) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, title 5, United States Code, appendix 2.

"Person," as used in this article, means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable compensation," as used in this article, means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable payment," as used in this article, means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient," as used in this article, includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly employed," as used in this article, means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of

such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

"State," as used in this article, means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) Prohibitions. (1) Section 1352 of title 31, United States Code, among other things, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; or the modification of any Federal contract, grant, loan, or cooperative agreement.

(2) The Act also requires Contractors to furnish a disclosure if any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a Federal contract, grant, loan, or cooperative agreement.

(3) The prohibitions of the Act do not apply under the following conditions:

(i) Agency and legislative liaison by own employees.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action if the payment is for agency and legislative liaison activities not directly related to a covered Federal action.

(B) For purposes of subdivision (b)(3)(i)(A) of this article, providing any information specifically requested by an agency or Congress is permitted at any time.

(C) The following agency and legislative liaison activities are permitted at any time where they are not related to a specific solicitation for any covered Federal action:

(1) Discussing with an agency the qualities and characteristics (including individual demonstrations) of the person's products or services, conditions or terms of sale, and service capabilities.

(2) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.

(D) The following agency and legislative liaison activities are permitted where they are prior to formal solicitation of any covered Federal action--

(1) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(2) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(3) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(E) Only those services expressly authorized by subdivision (b)(3)(i)(A) of this article are permitted under this article.

(ii) Professional and technical services.

(A) The prohibition on the use of appropriated funds, in subparagraph (b)(1) of this article, does not apply in the case of --

(1) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(2) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(B) For purposes of subdivision (b)(3)(ii)(A) of this article, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable.

Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this section unless they provide advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

(C) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(D) Only those services expressly authorized by subdivisions (b)(3)(ii)(A)(1) and (2) of this article are permitted under this article.

(E) The reporting requirements of 48 C.F.R. 3.803(a) shall not apply with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.

(iii) Disclosure.

(A) The Contractor who requests or receives from an agency a Federal contract shall file with that agency a disclosure form, OMB standard form LLL, Disclosure of Lobbying Activities, if such person has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (b)(1) of this article, if paid for with appropriated funds.

(B) The Contractor shall file a disclosure form at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph (c)(1) of this article. An event that materially affects the accuracy of the information reported includes--

(1) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or

(2) A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or

(3) A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.

(C) The Contractor shall require the submittal of a certification, and if required, a disclosure form by any person who requests or received any subcontract exceeding \$100,000 under the Federal contract.

(D) All subcontractor disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall submit all disclosures to the Contracting Officer at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(iv) Agreement. The Contractor agrees not to make any payment prohibited by this article.

(v) Penalties.

(A) Any person who makes an expenditure prohibited under paragraph (a) of this article or who fails to file or amend the disclosure form to be filed or amended by paragraph (b) of this article shall be subject to civil penalties as provided for by 31 U.S.C. 1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(B) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(vi) Cost allowability. Nothing in this article makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this article will not be made allowable under any other provision.

PART D - POST AWARD PROVISIONS

Article 40. AFFIRMATIVE ACTION FOR SPECIAL DISABLED AND VIETNAM ERA VETERANS

(Applicable to contracts and subcontracts of \$10,000 or more.)

(a) **Definitions.** "Appropriate office of the State employment service system," as used in this article, means the local office of the Federal-State national system of public employment offices assigned to serve the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

"Openings that the Contractor proposes to fill from within its own organization," as used in this article, means employment openings for which no one outside the Contractor's organization (including any affiliates, subsidiaries, and the parent companies) will be considered and includes any openings that the Contractor proposes to fill from regularly established "recall" lists.

"Openings that the Contractor proposes to fill under a customary and traditional employer-union hiring arrangement," as used in this article, means employment openings that the Contractor proposes to fill from union halls, under their customary and traditional employer-union hiring relationship.

"Suitable employment openings," as used in this article--

(1) Includes, but is not limited to, openings that occur in jobs categorized as--

- (i) Production and nonproduction;
- (ii) Plant and office;
- (iii) Laborers and mechanics;
- (iv) Supervisory and nonsupervisory;
- (v) Technical; and
- (vi) Executive, administrative, and professional positions

compensated on a salary basis of less than \$25,000 a year; and

(2) Includes full-time employment, temporary employment of over 3 days, and part-time employment, but not openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement, nor openings in an educational institution that are restricted to students of that institution.

(b) **General.** (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against the individual because the individual is a special disabled or Vietnam Era veteran. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified special disabled and Vietnam Era veterans without discrimination based upon their disability or veterans' status in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment ;
- (v) Advertising;
- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the

Secretary of Labor (Secretary) issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended.

(c) **Listing openings.** (1) The Contractor agrees to list all suitable employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any Contractor facility, including one not connected with performing this contract. An independent corporate affiliate is exempt from this requirement.

(2) State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service.

(3) The listing of suitable employment openings with the State employment service system is required at least concurrently with using any other recruitment source or effort and involves the obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the Contractor from any requirements of Executive orders or regulations concerning nondiscrimination in employment.

(4) Whenever the Contractor becomes contractually bound to the listing terms of this article, it shall advise the State employment service system, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the Contractor is contractually bound to these terms and has so advised the State system, it need not advise the State system of subsequent contracts. The Contractor may advise the State system when it is no longer bound by this contract article.

(5) Under the most compelling circumstances, an employment opening may not be suitable for listing, including situations when (i) the Government's needs cannot reasonably be supplied, (ii) listing would be contrary to national security, or (iii) the requirement of listing would not be in the Government's interest.

(d) **Applicability.** (1) This article does not apply to the listing of employment openings which occur and are filled outside the 50 states, the District of Columbia, Puerto Rico, Guam, Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(2) The terms of paragraph (c) above of this article do not apply to openings that the Contractor proposes to fill from within its own organization or under a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of its own organization or employer-union arrangement for that opening.

(e) **Postings.** (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified special disabled veterans and veterans of the Vietnam era, and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified special disabled and Vietnam Era veterans.

(f) **Noncompliance.** If the Contractor does not comply with the requirements of this article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(g) **Subcontracts.** The Contractor shall include the terms of this article in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

Article 41. EQUAL OPPORTUNITY

(a) If, during any 12-month period (including the 12 months preceding the award of this contract), the Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the Contractor shall comply with subparagraphs (b)(1) through (11) below. Upon request, the Contractor shall provide information necessary to determine the applicability of this article.

(b) During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(2) The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. This shall include, but not be limited to, (i) employment, (ii) upgrading, (iii) demotion, (iv) transfer, (v) recruitment or recruitment advertising, (vi) layoff or termination, (vii) rates of pay or other forms of compensation, and (viii) selection for training, including apprenticeship.

(3) The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this article.

(4) The Contractor shall, in all solicitations or advertisement for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(5) The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the Contractor's commitments under this article, and post copies of the notice in conspicuous places available to employees and applicants for employment.

(6) The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.

(7) The Contractor shall furnish all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. Standard Form 100 (EEO-1), or any successor form, is the prescribed form to be filed within 30 days following the award, unless filed within 12 months preceding the date of award.

(8) The Contractor shall permit access to its books, records, and accounts by the contracting agency or the Office of Federal Contract Compliance Programs (OFCCP) for the purposes of investigation to ascertain the Contractor's compliance with the applicable rules, regulations, and orders.

(9) If the OFCCP determines that the Contractor is not in compliance with this article or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended, the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.

(10) The Contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this article in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.

The Contractor shall take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

(c) Notwithstanding any other article in this contract, disputes relative to this article will be governed by the procedures in 41 CFR 60-1.1.

Article 42. UTILIZATION OF WOMEN-OWNED SMALL BUSINESSES

(a) "Women-owned small businesses," as used in this article, means businesses that are at least 51 percent owned by women who are United States citizens and who also control and operate the business.

"Control," as used in this article, means exercising the power to make policy decisions.

"Operate," as used in this article, means being actively involved in the day-to-day management of the business.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

(b) It is the policy of the United States that women-owned small businesses shall have the maximum practicable opportunity to participate in performing contracts awarded by any Federal agency.

(c) The Contractor agrees to use its best efforts to give women-owned small businesses the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with the efficient performance of its contract.

Article 43. AFFIRMATIVE ACTION FOR HANDICAPPED WORKERS

(Applicable to contracts and subcontracts that exceed \$2,500.)

(a) **General.** (1) Regarding any position for which the employee or applicant for employment is qualified, the Contractor shall not discriminate against any employee or applicant because of physical or mental handicap. The Contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as--

- (i) Employment;
- (ii) Upgrading;
- (iii) Demotion or transfer;
- (iv) Recruitment;
- (v) Advertising;

- (vi) Layoff or termination;
- (vii) Rates of pay or other forms of compensation; and
- (viii) Selection for training, including apprenticeship.

(2) The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) **Postings.** (1) The Contractor agrees to post employment notices stating (i) the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped individuals and (ii) the rights of applicants and employees.

(2) These notices shall be posted in conspicuous places that are available to employees and applicants for employment. They shall be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, Department of Labor (Director), and provided by or through the Contracting Officer.

(3) The Contractor shall notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor is bound by the terms of Section 503 of the Act and is committed to take affirmative action to employ, and advance in employment, qualified physically and mentally handicapped individuals.

(c) **Noncompliance.** If the Contractor does not comply with the requirements of this article, appropriate actions may be taken under the rules, regulations, and relevant orders of the Secretary issued pursuant to the Act.

(d) **Subcontracts.** The Contractor shall include the terms of this Article in every subcontract or purchase order in excess of \$2,500 unless exempted by rules, regulations, or orders of the Secretary. The Contractor shall act as specified by the Director to enforce the terms, including action for noncompliance.

Article 44. UTILIZATION OF LABOR SURPLUS AREA CONCERNS

(Applicable if the contract or subcontract exceeds \$10,000.)

(a) **Applicability.** This article is applicable if this contract exceeds the appropriate small purchase limitation in the Federal Acquisition Regulation, Title 48, C.F.R. Part 13.

(b) **Policy.** It is the policy of the Government to award contracts to concerns that agree to perform substantially in labor surplus areas (LSA's) when this can be done consistent with the efficient performance of the contract and at prices no higher than are obtainable elsewhere. The Contractor agrees to use its best efforts to place subcontracts in accordance with this policy.

(c) **Order of preference.** In complying with paragraph (b) above and with paragraph (c) of the article of this contract entitled Utilization of Small Business Concerns and Small Disadvantaged Business Concerns, the Contractor shall observe the following order of preference in awarding subcontracts: (1) small business concerns that are LSA concerns, (2) other small business concerns, and (3) other LSA concerns.

(d) **Definitions.** "Labor surplus area," as used in this article, means a geographical area identified by the Department of Labor in accordance with 20 CFR 654, Subpart A, as an area of concentrated unemployment or underemployment or an area of labor surplus.

"Labor surplus area concern," as used in this article, means a concern that together with its first-tier subcontractors will perform substantially in labor surplus areas. Performance is substantially in labor surplus areas if the costs incurred under the contract on account of manufacturing, production, or performance of appropriate services in labor surplus areas exceed 50 percent of the contract price.

Article 45. UTILIZATION OF SMALL BUSINESS CONCERNS AND SMALL DISADVANTAGED BUSINESS CONCERNS

(Applicable to contracts which exceed \$10,000.)

(a) It is the policy of the United States that small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency.

(b) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this article.

(c) As used in this contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern--

(1) Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

(2) Whose management and daily business operations are controlled by one or more of such individuals.

The Contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

(d) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.

(e) "Asian-Indian American," as used in this provision, means a United States citizen whose origins are in India, Pakistan, or Bangladesh.

"Asian-Pacific American," as used in this provision, means a United States citizen whose origins are in Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific Islands, the Northern Mariana Islands, Laos, Cambodia, or Taiwan.

"Native Americans," as used in this provision, means American Indians, Eskimos, Aleuts, and native Hawaiians.

"Small business concern," as used in this provision, means a concern, including its affiliates, that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria and size standards in 13 CFR 121.

"Small disadvantaged business concern," as used in this provision, means a small business concern that (1) is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, or a publicly owned business having at least 51 percent of its stock owned by one or more socially and economically disadvantaged individuals and (2) has its management and daily business controlled by one or more such individuals.

(f) **Qualified groups.** The offeror shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian-Pacific

Americans, Asian-Indian Americans, and other individuals found to be qualified by the SBA under 13 CFR 124.1.

Article 46. CONVICT LABOR

The Contractor agrees not to employ any person undergoing sentence of imprisonment in performing this contract except as provided by 18 U.S.C. 4082(c)(2) and Executive Order 11755, December 29, 1973.

Article 47. CLEAN AIR AND WATER

(a) "Air Act," as used in this article, means the Clean Air Act (42 U.S.C. 7401 et seq.).

"Clean air standards," as used in this article, means--

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 U.S.C. 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 U.S.C. 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 U.S.C. 7412(d)).

"Clean water standards," as used in this article, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a State under an approved program, as authorized by section 402 of the Water Act (33 U.S.C. 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 U.S.C. 1317).

"Compliance," as used in this article, means compliance with--

(1) Clean air or water standards; or

(2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

"Facility," as used in this article, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

"Water Act," as used in this article, means Clean Water Act (33 U.S.C. 1251 et seq.).

(b) The Contractor agrees--

(1) To comply with all the requirements of section 114 of the Clean Air Act (42 U.S.C. 7414) and section 308 of the Clean Water Act (33 U.S.C. 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;

(2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EPA eliminates the name of the facility from the listing;

(3) To use best efforts to comply with clean air standards and clean water standards at the facility in which the contract is being performed; and

(4) To insert the substance of this article into any nonexempt subcontract, including this subparagraph (b)(4).

Article 48. OFFICIALS NOT TO BENEFIT

Unless exempted by 41 U.S.C. 22, no member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this article does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

Article 49. BUY AMERICAN ACT--SUPPLIES

(a) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic end products.

"Components," as used in this article, means those articles, materials, and supplies incorporated directly into the end products.

"Domestic end product," as used in this article, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this article shall be treated as domestic.

"End products," as used in this article, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those--

(1) For use outside the United States;

(2) That the Government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable. (The foregoing requirements are administered in accordance with Executive Order No. 10582, dated December 17, 1954, as amended, and Federal Acquisition Regulation, Title 48, C.F.R. 25.1.)

Article 50. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT--OVERTIME COMPENSATION--GENERAL

This contract, to the extent that it is of a character specified in the Contract Work Hours and

Safety Standards Act (40 U.S.C. 327-333) (the Act), is subject to the following terms and all other applicable provisions and exceptions of the Act and the regulations of the Secretary of Labor.

(a) **Overtime requirements.** Contractor or subcontractor shall not require or permit any laborer or mechanic to work in excess of 8 hours in any calendar day, or 40 hours in any workweek, on any part of the contract work subject to the Act; **unless**, the laborer or mechanic receives compensation at a rate not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 8 hours in any calendar day, or 40 hours in any workweek, whichever produces the greater amount of overtime.

(b) **Violation, liability for unpaid wages, and liquidated damages.** If the terms of paragraph (a) above are violated, the Contractor and any subcontractor responsible for the violation shall be liable to any affected employee for unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. These damages are computed for each individual laborer or mechanic at \$10 for each calendar day on which the employee was required or permitted to be employed in violation of paragraph (a) above.

(c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer may withhold from the Contractor, from any moneys payable on account of work performed by the Contractor or subcontractor, such amounts as may administratively be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in paragraph (b) above.

(d) **Subcontracts.** The Contractor and subcontractor shall insert paragraphs (a) through (d) of this article in all subcontracts.

(e) **Records.** The Contractor shall maintain payroll records containing the information specified in 29 CFR 516.2(a). These records shall be preserved for 3 years from contract completion. The Contractor will make the records available for inspection by authorized representatives of the Agency and the Department of Labor, and will permit such representatives to interview employees during working hours on the job.

Article 51. ADDITIONAL BOND SECURITY

The Contractor shall promptly furnish additional security required to protect the Government and persons supplying labor or materials under this contract if--

(a) Any surety upon any bond furnished with this contract becomes unacceptable to the Government;

(b) Any surety fails to furnish reports on its financial condition as required by the Government; or

(c) The contract price is increased so that the penal sum of any bond becomes inadequate in the opinion of the Contracting Officer.

Article 52. SPECIFICATIONS

The commodity shall meet the specifications prescribed by the contract and shall conform to the applicable provisions of the Federal Food, Drug, and Cosmetic Act, as amended, other applicable statutes, and regulations issued thereunder. Contractor agrees to hold the United States harmless if royalties are due because of the formulation or processing requirements for the commodity, or any requirements of the contract.

Article 53. SANITATION, PREMISES, AND EQUIPMENT

(a) All equipment, supplies, facilities, storage space, and premises shall be maintained in a clean, sanitary condition in accordance with good commercial practice. The commodity shall be handled by persons in good health and free from any communicable diseases and in such manner as to prevent contamination.

(b) The cars or trucks in which the commodity is loaded by Contractor shall be clean and sanitary and in a condition to protect the commodity during transit so that it arrives at destination free from contamination.

(c) Agency reserves the right to inspect and approve the premises and equipment before acceptance of offers and to inspect at any time, at Agency' expense, during the period of performance under the contract, equipment, supplies, facilities, storage space, and premises used in the manufacturing, processing or servicing of the commodity. Contractor agrees to permit, during regular business hours, authorized representatives of Agency to enter any of its premises at which the commodity is manufactured, processed, stored, or serviced, and to inspect such equipment, supplies, facilities, storage space, and premises and to observe the manufacturing, processing, or servicing operations. Any such inspection or prior approval of equipment and premises shall not relieve Contractor of its independent obligation to maintain the equipment and premises in a satisfactory and sanitary condition. Failure of Contractor to maintain such equipment and premises in a satisfactory and sanitary condition shall constitute a failure to perform entitling Agency to terminate the contract under Article 68(a)(2). If for any reason Contractor's plant designated in the contract is impeded or prevented from manufacturing, processing, or servicing the commodity, Contractor may, with the approval of Agency, designate another plant for the manufacture, processing or servicing of such commodity: Provided, that if by reason of designation of such other plant additional expenses are incurred by Agency, such additional expenses shall be for the account of Contractor and any savings shall accrue to Agency.

(d) The commodity shall be processed in a plant which, at the time of processing, is operating in accordance with any regulations published by Agency applicable to plants processing the commodity.

Article 54. INSPECTION OF SUPPLIES--FIXED-PRICE (DEVIATION)

(a) Definition. "Supplies," as used in this article, includes but is not limited to raw materials, components, intermediate assemblies, end products, and lots of supplies.

(b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering supplies under this contract and shall tender to the Government for acceptance only supplies that have been inspected in accordance with the inspection system and have been found by the contractor to be in conformity with contract requirements. As part of the system, the Contractor shall prepare records evidencing all inspections made under the system and the outcome. These records shall be kept complete and made available to the Government during contract performance and for as long afterwards as the contract requires. The Government may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph. These reviews and evaluations shall be conducted in a manner that will not unduly delay the contract work. The right of review, whether exercised or not, does not relieve the Contractor of the obligations under the contract.

(c) The Government has the right to inspect and test all supplies called for by the contract, to the extent practicable, at all places and times, including the period of manufacture, and in any

event before acceptance. The Government shall perform inspections and tests in a manner that will not unduly delay the work. The Government assumes no contractual, obligation to perform any inspection and test for the benefit of the Contractor unless specifically set forth elsewhere in this contract.

(d) If the Government performs inspection or test on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. The cost of inspection, samples taken for inspection, and any chemical analysis required for testing shall be for the account of the Contractor. Except as otherwise provided in the contract, the Government shall bear the expense of Government inspections or tests made at other than the Contractor's or subcontractor's premises; **provided**, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.

(e) (1) When supplies are not ready at the time specified by the Contractor for inspection or test, the Contracting Officer may charge to the Contractor the additional cost of inspection or test.

(2) The Contracting Officer may also charge the Contractor for any additional cost of inspection or test when prior rejection makes the reinspection or retest necessary.

(f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.

(g) The Contractor shall remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the Contractor. The Contractor shall not tender for acceptance corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.

(h) If the Contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either (1) by contract or otherwise, remove, replace, or correct the supplies and charge the cost to the Contractor or (2) terminate the contract for default. Unless the Contractor corrects or replaces the supplies within the delivery schedule, the Contracting Officer may require their delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute.

(i) (1) If this contract provides for the performance of Government quality assurance at source, and if requested by the Government, the Contractor shall furnish advance notification of the time (i) when Contractor inspection or tests will be performed in accordance with the terms and conditions of the contract and (ii) when the supplies will be ready for Government inspection.

(2) The Government request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished. Requests shall not require more than 2 workdays of advance notification if the Government representative is in residence in the Contractor's plant, nor more than 7 workdays in other instances.

(j) The Government shall accept or reject supplies as promptly as practicable after delivery, unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the Contractor from responsibility, nor impose liability on the Government, for nonconforming supplies.

(k) Inspections and tests by the Government do not relieve the Contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance.

Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.

(1) If acceptance is not conclusive for any of the reasons in paragraph (f) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of this contract, shall have the right to require the Contractor (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the Contractor's plant at the Contracting Officer's election, and in accordance with a reasonable delivery schedule as may be agreed upon between the Contractor and the Contracting Officer; **provided**, that the Contracting Officer may require a reduction in contract price if the Contractor fails to meet such delivery schedule, or (2) within a reasonable time after receipt by the Contractor of notice of defects or nonconformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the Contractor, the Contractor shall bear the transportation cost from the original point of delivery to the Contractor's plant and return to the original point when that point is not the Contractor's plant. If the Contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 10 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right to contract or otherwise to replace or correct such supplies and charge to the Contractor the cost occasioned the Government thereby.

(m) Inspectors and graders have no authority to prescribe any changes in the contract or to order contractor to perform contrary to any manner prescribed in the contract. Furthermore, inspector and grader authority is limited to determining acceptability of commodities tendered or serviced under the contract.

(n) Inspection shall include checkweighing of a representative number of containers of the commodity.

(o) Inspection shall not relieve Contractor of the responsibility to furnish a commodity (including packages and containers) meeting specifications or to otherwise fulfill the terms of the contract. An inspection certificate is only prima facie evidence of the matters therein stated at the time and place of inspection.

(p) If any reinspection is performed by Agency at destination points, the costs thereof shall be borne by Agency if the product is found to be in compliance with the contract provisions, otherwise the cost shall be borne by Contractor.

Article 55. CHECKLOADING

(a) Contractor shall not load the commodity for shipment or transfer the commodity in store unless, at the time of such loading or transferring, the commodity is checkloaded by Agency or by a person of the inspection or grading service designated by Agency. Contractor is responsible for giving notice in sufficient time for a checkloader to be present. The cost of checkloading shall be for the account of Contractor. Checkloading refers to identifying the commodity which was previously inspected and found to meet contract requirements, examining the commodity at the time of loading or transferring for condition of containers and for compliance with labeling and container marking requirements, and determining the number of containers per car, truck, or lot.

(b) Checkloading by persons licensed or authorized by Agency shall not relieve Contractor of the obligation to effect a delivery of the commodity meeting contract requirements or constitute a waiver of any of Agency's rights under the contract. The certificates issued as a result of

such official checkloading shall be only prima facie evidence of the number and condition of containers.

(c) Contractor shall be liable for all shortages which occur before delivery, except that if shipment is by common carrier, Contractor shall not be liable for a shortage reported at destination unless it can be established, notwithstanding the checkloading certificate, that there was an actual shortage at the time of loading for shipment.

(d) This paragraph (d) is not applicable to purchases delivered f.o.b. origin. If the shipment is by truck and Agency specifically requests "Exclusive Use of Vehicle", Agency will reimburse Contractor for any additional transportation costs due to shipment under "Exclusive Use of Vehicle." The sealing of trucks as part of the checkloading procedure shall not be construed as such a request. In the absence of such a request by Agency, any additional cost of transportation and related services due to shipment under "Exclusive Use of Vehicle" shall be for Contractor's account. Contractor shall be responsible for making such arrangements as may be necessary to prevent the application of "Exclusive Use of Vehicle" charges when such charges result in higher transportation costs. The arrangements to be made by Contractor may include an instruction to the checkloader not to seal the truck when the sealing will result in "Exclusive Use of Vehicle" charges. If, notwithstanding such arrangements, the checkloader seals the truck, Contractor shall have the responsibility for removing the seals.

Article 56. SHIPMENT AND DELIVERY

(a) The ASCS Commodity office shall issue a Notice(s) to Deliver at least seven days prior to the first day of each period scheduled in the contract for the shipment from origin of a specified quantity of the commodity. Any modification of such period must be made by agreement with the applicable Contracting Office. Such period or any modification thereof is hereinafter called "the contract shipping period." The date on which the Notice to Deliver is issued shall be shown thereon. Contractor shall ship in accordance with instructions in the Notice(s) to Deliver, except that (1) if a Notice to Deliver is issued less than seven days prior to the first day of the contract shipping period, such shipping period and each subsequent consecutive shipping period under the contract directly affected by the delay shall be extended by the number of days such Notice is issued late; and (2) in any event, Contractor shall be allowed the number of business days contained in the period specified in the contract for shipment of the contract quantity, beginning with seven days after the Notice to Deliver is issued. Notwithstanding the foregoing, Contractor shall not be entitled to any extension of the contract shipping period under this Article 56(a) unless it furnishes evidence satisfactory to Agency that it was prepared to ship during the contract shipping period.

(b) The commodity shall be delivered by Contractor in the manner (f.a.s. vessel, f.o.b. cars, etc.) and at the point(s) of delivery, as required by the contract, pursuant to shipping instructions issued by Agency. Shipment shall not be made before receipt from Agency of shipping instructions, or before the time the commodity has been inspected and found to meet contract specifications.

(c) Immediately on shipment, Contractor shall, in accordance with instructions from Agency, notify Agency, or consignee, or both, of the shipment.

(d) Title to supplies furnished under this contract shall pass to the Government upon formal acceptance, regardless of when or where the Government takes physical possession, unless the contract specifically provides for earlier passage of title.

(e) Unless the contract specifically provides otherwise, risk of loss or damage to supplies shall remain with the Contractor until, and shall pass to the Government upon--

(1) Delivery of the commodity to a carrier, if contract delivery terms are f.o.b. origin; or
(2) Acceptance by the Government or delivery of the commodities to the Government at the destination specified in the contract, whichever is later, if contract delivery terms are f.o.b. destination.

(3) If delivery is f.a.s. vessel, title and risk of loss and damage shall pass to Agency when the commodity is placed:

(i) Alongside vessel within reach of its loading tackle, or
(ii) On the dock designated by Agency if the vessel is not available, unless Contractor failed to ship pursuant to the shipping instructions and Agency determines that such failure caused the commodity to arrive too late to be loaded aboard the vessel.

(4) If delivery is made f.a.s. vessel at the designated port, Contractor shall pay all costs, including but not limited to wharfage, tollage, checking and handling charges necessary to place the commodity free alongside vessel within reach of its loading tackle, and shall furnish a dock receipt, ship's receipt, or other similar document as evidence of delivery. If, after arrival of commodity at the designated port, Contractor is delayed in delivering the commodity f.a.s. vessel at such port, the Contractor establishes that such delay is due to causes beyond the control and without the fault or negligence of Contractor and any of its subcontractors including but not limited to failure of Agency to make a vessel or dock available, Agency shall reimburse Contractor on presentation of paid bills for charges incurred in connection with storage in cars and for other charges resulting from such delay, unless Contractor failed to ship pursuant to shipping instructions and Agency determines that such failure caused the delay in delivering the commodity f.a.s. vessel.

(f) Paragraph (e) above shall not apply to commodities that so fail to conform to contract requirements as to give a right of rejection. The risk of loss of or damage to such nonconforming commodities remains with the Contractor until cure or acceptance. After cure or acceptance, paragraph (e) above shall apply.

(g) Under paragraph (e) above, the Contractor shall not be liable for loss of or damage to commodities caused by the negligence of officers, agents, or employees of the Government acting within the scope of their employment.

Article 57. LOADING TRUCK AND RAIL SHIPMENTS (DEVIATION)

(a) Truck shipments shall be loaded and (when necessary) braced to ensure that there will be no shifting of the commodity in transit and that it will arrive at destination in damage-free condition.

(b) (1) Upon receipt of shipping instructions, as provided in this contract, the supplies to be included in any carload shipment by rail shall be loaded, blocked, and braced by the Contractor in accordance with the standards published by the Association of American Railroads and effective at the time of shipment.

(2) Shipments, for which the Association of American Railroads has published no such standards, shall be loaded, blocked, and braced in accordance with standards established by the shipper as evidenced by written acceptance of an authorized representative of the carrier.

(3) The Contractor shall be liable for payment of any damage to any supplies caused by the failure to load, block, and brace in accordance with acceptable standards set forth herein.

(4) A copy of the appropriate pamphlet of the Association of American Railroads may be obtained from that Association.

(c) The cost of all loading and bracing shall be borne by the Contractor.

Article 58. PROTECTIVE SERVICES

(a) If the contract specifies that delivery is to be made f.o.b. cars or trucks at origin, Contractor shall order protective services as specified in the shipping instructions issued by Agency.

(b) If the contract provides for delivery at point(s) other than f.o.b. cars or truck at origin, Contractor shall provide protective services when, and to the extent necessary to adequately protect the commodity while in transit, including allowable free time for unloading at intermediate or final destination(s), or both.

Article 59. VARIATION IN QUANTITY

No variation in the quantity of any item called for by the contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in the announcement.

Article 60. FAILURE OF THE COMMODITY TO MEET CONTRACT REQUIREMENTS AND SPECIFICATIONS

(a) Contractor shall be liable for failure of the commodity to meet all of the contract requirements and specifications, including those with respect to packages and containers, subject to the other provisions of this Article.

(b) If Agency discovers on or after delivery that all or any part of the commodity (including packages and containers) did not meet contract requirements and specifications at time of delivery, Agency shall have the right:

(1) to accept or retain the entire quantity and hold Contractor liable for the damages sustained, as determined by Agency, or

(2) to reject the entire quantity or to reject a portion thereof and accept or retain the remainder. Agency may at its discretion terminate the contract with respect to the quantity rejected or permit Contractor to replace all or part of the quantity rejected with a quantity of the commodity that does conform to all contract requirements and specifications and, in either circumstance, hold Contractor liable for damages sustained, as determined by Agency. To "reject" means to refuse to accept on delivery or, after delivery and acceptance, to notify Contractor of revocation of the acceptance, in whole or in part. In either event, Contractor shall be held liable for all damages sustained, as determined by Agency.

(c) Any quantity rejected may be returned to Contractor, destroyed (if unfit for human consumption), or disposed of for the account of Contractor in accordance with applicable health and sanitation laws and regulations. Any rejection of a quantity of the commodity delivered by common carrier shall be made by the office of Agency which issued the shipping instructions. Consignee may inform the carrier or Contractor of rejection of a quantity of the commodity delivered by contract carrier or by Contractor's own trucks. Contractor will be advised of Agency's election under (b)(2) of this Article either at the time of rejection or within a reasonable time thereafter.

(d) Inspection, checkloading, issuance of inspection or checkloading certificates, shipping instructions, or bills of lading, any payment by Agency, or the receipt of a commodity shall not constitute a waiver of Agency's rights under this Article.

(e) The rights and remedies of Agency provided in this Article are not exclusive or in derogation of any other rights and remedies provided by law or contract.

Article 61. LOSS DUE TO DETERIORATION OR SPOILAGE

Contractor shall reimburse Agency for all losses due to deterioration or spoilage sustained by Agency for which Contractor is responsible, but only if such losses are discovered by such date as may be stated in the announcement, or a reasonable time, as determined by Agency, after delivery if no such date is stated. Contractor agrees to reimburse Agency for such losses within 10 days after date of billing by Agency. That part of the commodity as to which Agency makes a claim based on deterioration or spoilage shall be held by Agency subject to disposition instructions of Contractor (unless the nature of the deterioration or spoilage is such as to require condemnation and destruction as determined by Agency or its authorized representative) but need not be held by Agency in excess of 30 days after Agency sends notice of such claim to Contractor. In lieu of reimbursing Agency, Contractor may replace the deteriorated or spoiled commodity with an equal quantity of commodity which conforms to all contract requirements and specifications, if such replacement is agreed to by Agency.

Article 62. OBLITERATION OF MARKINGS

The appearance in commercial or other channels of any labels, bags, cans, can lids, cases, or any other type of packaging, either filled or unfilled (hereinafter referred to as "containers and container materials") bearing markings required under the contract may cause Agency expense in determining whether commodities have been diverted from authorized use and in answering inquiries. Contractor agrees to take necessary action to prevent the appearance in commercial or other channels of containers and container materials bearing markings required under the contract, including those held by Contractor or others, e.g., overruns. The following actions with respect to all inner and outer containers and container materials will constitute compliance with the intent of this Article: (a) complete obliteration of all markings required under the contract with a permanent opaque paint, or removal of labels which bear such markings, and overlaying or replacing markings so obliterated or removed with commercial labelings; (b) placing a transparent pressure-sensitive sticker on all containers and container materials bearing USDA markings, which shall state in lettering of a prominent size "SALVAGE BY (insert firm's name)" directly on the "NOT TO BE SOLD OR EXCHANGED" legend wherever it appears on the containers and container materials; (c) drawing one or more x's completely through the markings and with a permanent stamp conspicuously placing thereon the following legend: "This container has not been used and shall not be used for shipment of Government commodities."; or (d) any other actions, approved by the Contracting Officer, which accomplish the intent of the foregoing.

Article 63. CHANGES--FIXED-PRICE

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

- (1) Drawings, designs, or specifications when the supplies to be furnished are to be

specially manufactured for the Government in accordance with the drawings, designs, or specifications.

(2) Method of shipment or packing.

(3) Place of delivery.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must submit any "proposal for adjustment" (hereafter referred to as proposal) under this article within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes article. However, nothing in this article shall excuse the Contractor from proceeding with the contract as changed.

Article 64. CHANGE IN PLACE OR MANNER OF SHIPMENT OR DELIVERY (DEVIATION)

(a) If the commodity price is on the basis of delivery f.o.b. cars or trucks at origin and Contractor requests a change in the shipping point named in the contract and such request is approved by Agency, any additional cost of transportation and related services shall be deducted from payments otherwise due Contractor and any savings shall accrue to Agency.

(b) If the commodity price is on the basis of delivery f.o.b. cars or trucks at destination or f.a.s. vessel at designated ports and if Agency orders delivery of the commodity in a manner or to destinations other than those stated in the contract, any additional cost of transportation and related services shall be for the account of Agency and any savings will accrue to Agency.

(c) **Diversion of Shipment under f.o.b. Destination Contracts.** When a place of delivery is changed in accordance with the Changes article of this contract, the contract price shall be adjusted pursuant to that article for any resulting increase or decrease in the cost of performance in accordance with best available information as determined by Agency. No adjustment shall be made for changes in transportation costs when commodities are identically priced for delivery regionally or nationally and the place of delivery is changed within the area to which the identical price applies. In all other cases, price adjustments due to changes in transportation costs shall be determined by the agency prior to shipment.

(d) If (1) shipments to the new destination are made by the Contractor's owned or leased trucks and/or (2) shipments to the original destination were made or would have been made by the Contractor's owned or leased trucks, the Contractor shall so certify. The Government shall make an appropriate adjustment in contract prices for payment purposes at the rate and in the manner specified in the Announcement.

(e) If any or all of the following data are not clearly shown on, or available from, copies of paid freight bills for each diverted shipment, the Contractor shall supply a statement showing the--

(1) Full name of the carrier or carriers in the routing;

(2) Number of containers ;

(3) Gross shipping weight;

(4) Actual date of shipment; and

(5) Freight description for the supplies as indicated in the "National Motor Freight Classification" or the "Uniform Freight Classification" (Rail).

Article 65. COMPENSATION FOR LATE MAILING OF NOTICE TO DELIVER

Failure to mail a Notice to Deliver in accordance with the terms of the contract may result in delays in shipment and damages to contractor. Because it will be difficult to prove the amount of such damage, Agency shall pay to Contractor as liquidated damages for causing delay in shipment by late mailing of a Notice to Deliver an amount to be specified in the announcement for each day of such delay in shipment not to exceed the number of days by which the Notice to Deliver was mailed late. It is mutually agreed that such damages are a reasonable estimate of the probable actual damages that may be caused by late mailing of such Notice(s). Contractor's claim for payment of damages for delays with respect to the shipping period for which a Notice to Deliver was mailed late must be supported by evidence satisfactory to Agency that Contractor was prepared to ship in accordance with the contract shipping schedule.

If the delay in shipment caused by the late mailing of a Notice to Deliver causes delays in other shipments in later shipping periods under the same contract, Contractor may claim liquidated damages for delays in the other shipments occurring during the later shipping period if it furnishes evidence satisfactory to Agency that it could not, without disruption of normal business operations, complete shipments as required under the contract shipping schedule or any extension thereof by Agency. Agency shall not be liable for liquidated damages under this section if Agency determines that, at the time the Notice to Deliver is to be mailed, such mailing would be impracticable because a condition specified in Article 2(j) of this document exists, or is likely to exist, which could prevent either shipment by Contractor or acceptance by consignee. In such cases, the period for mailing of the Notice to Deliver and shipment of the commodity shall be extended for the number of days that Agency determines such condition exists.

Article 66. TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED-PRICE) (SHORT FORM).

The Contracting Officer, by written notice, may terminate this contract, in whole or in part, when it is in the Government's interest. If this contract is terminated, the rights, duties, and obligations of the parties, including compensation to the Contractor, shall be in accordance with the Federal Acquisition Regulation, Title 48, C.F.R. Part 49 in effect on the date of this contract.

Article 67. LATE SHIPMENT/LIQUIDATED DAMAGES

(a) If Contractor determines that it will not be able to make shipment of a quantity of the commodity by the final shipment date under the contract, or if it does not make shipment of a quantity of the commodity by the final shipment date, contractor shall inform Contracting Officer as soon as feasible, indicating how soon it expects to be able to make shipments. Each week thereafter until all late shipments have been made, contractor shall inform Contracting Officer how soon it expects to be able to make shipments.

(b) The following shall apply to late shipments:

(1) Late shipment of the commodity by Contractor will cause serious and substantial

damages to Agency because of its urgent need for timely performance, but it will be difficult to prove the amount of such damages.

(2) In the event the contract is not terminated because of delay in shipment, Contractor shall continue performance and be liable to Agency for liquidated damages, at the daily rate specified in the announcement, with respect to the quantity of the commodity which is not shipped by the final shipment date under the contract as fixed and agreed, and liquidated damages for each day of delay, until such time as the commodity is shipped.

(3) In the event Agency exercises its right of termination in whole or in part as provided in paragraph (a) of Article 68 Contractor shall be liable to Agency for excess costs as provided in paragraph (b) of Article 68 and, in addition, for liquidated damages. Liquidated damages are assessed at the daily rate specified in the announcement against the quantity of commodity not shipped by the final shipment date under the contract as fixed and agreed. Liquidated damages are payable for each day of delay, until such time as Agency obtains or could have obtained shipment of a similar commodity elsewhere.

(4) It is mutually agreed that such damages are a reasonable estimate of the probable actual damages for delay in shipment. In no event shall liquidated damages be imposed for more than 45 days of delay except where mutually agreed upon between Contractor and Agency.

(5) The foregoing provisions for liquidated damages shall also apply to replacement shipments, if such shipments are not made within the agreed time for such replacements.

(6) Shipment made by Contractor at its risk prior to receipt of results of inspection shall not be considered to be shipment under the contract if results of inspection indicate the commodity does not meet contract specifications and the commodity is not accepted by Agency.

(7) Contractor shall not be liable for liquidated damages for delays due to causes which would relieve the contractor from liability for excess costs as provided in paragraph (c) of Article 68.

Article 68. DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (DEVIATION)

(a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the Contractor, terminate this contract in whole or in part if the Contractor fails to--

(i) Deliver the supplies or to perform the services within the time specified in this contract or any extension;

(ii) Make progress, so as to endanger performance of this contract (but see subparagraph (a)(2) below); or

(iii) Perform any of the other provisions of this contract (but see subparagraph (a)(2) below).

(2) The Government's right to terminate this contract under subdivisions (1)(ii) and (1)(iii) above, may be exercised if the Contractor does not cure such failure within 10 days (or more if authorized in writing by the Contracting Officer) after receipt of the notice from the Contracting Officer specifying the failure.

(b) If the Government terminates this contract in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the Government for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

(c) Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include (1) acts of

God or of the public enemy, (2) acts of the Government in either its sovereign or contractual capacity, (3) fires, (4) floods, (5) epidemics, (6) quarantine restrictions, (7) strikes, (8) freight embargoes, and (9) unusually severe weather. However, if Contractor's plant was on strike at the time it submitted the offer resulting in the contract, and if Contractor's failure to perform the contract was because of such strike, Contractor shall not be excused from liability under this paragraph. In each instance the failure to perform must be beyond the control and without the fault or negligence of the Contractor. Contractor has the burden of proof to show that its failure to perform is excusable under this paragraph and must submit documentary evidence sufficient to show its freedom from fault or negligence.

(d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform, unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the Contractor to meet the required delivery schedule.

(e) If this contract is terminated for default, the Government may require the Contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any (1) completed supplies, and (2) partially completed supplies and materials, and contract rights (collectively referred to as "manufacturing materials" in this Article) that the Contractor has specifically produced or acquired for the terminated portion of this contract. Upon direction of the Contracting Officer, the Contractor shall also protect and preserve property in its possession in which the Government has an interest.

(f) The Government shall pay contract price for completed supplies delivered and accepted. The Contractor and Contracting Officer shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes Article. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.

(g) If, after termination, it is determined that the Contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.

(h) The rights and remedies of the Government in this Article are in addition to any other rights and remedies provided by law or under this contract.

Article 69. ASSIGNMENT OF CLAIMS (DEVIATION)

(a) If USDA is the Agency named in the contract, the Contractor, under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence. Any such assignment shall be recognized only if and when the assignee thereof files with the Agency written notice of the assignment, together with a signed copy of the instrument of assignment, in accordance with the instructions on Form ASCS-66, Notice of Assignment. Any assignment or reassignment authorized under the Act and this article shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee

for two or more parties participating in the financing of this contract. The instrument of assignment may be executed on Form ASCS-347, Instrument of Assignment.

(b) If CCC is the Agency named in the contract, no assignment by Contractor shall be made of the contract, or of any right thereunder, except that Contractor may assign the proceeds of the contract to a bank, trust company, or other financing institution, including any Federal lending agency, or to a person or firm that holds a lien or encumbrance at the time of assignment, and, subject to the prior approval of the Contracting Officer, assignment may be made to any other person or firm: Provided, that such assignment shall be recognized only if and when the assignee thereof files with Agency written notice of the assignment together with a signed copy of the instrument of assignment, in accordance with the instructions on Form CCC-251, Notice of Assignment: And provided further, that any such assignment shall cover all amounts payable and not already paid under the contract, shall not be made to more than one party and shall not be subject to further assignment, except that any such assignment may be made to one party as agent or trustee for two or more parties participating in such financing. The instrument of assignment may be executed on Form CCC-252, Instrument of Assignment.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

(d) Forms relating to assignments may be obtained from the Contracting Officer or the Commodity Office, ASCS. Contractor may use the forms mentioned in (a) or (b) or may use his own forms providing they are in a format basically consistent with the prescribed form and contain essentially the same provisions.

Article 70. INVOICES AND PAYMENT AND PAYMENT OF INTEREST

(a) Invoices for payment for the commodity, and for reimbursement of transportation and protective service charges, if any, must be submitted separately by the Contractor to the Fiscal Division, Kansas City Commodity office. Invoices for payment for the commodity must be made on the invoice portion of the Notice to Deliver or on a commercial type invoice and be supported by the original (official) inspection and checkloading certificates, if applicable, and either a copy of commercial bill of lading signed by the carrier's agent or, in lieu thereof, a copy of a consignee's receipt evidencing delivery. Invoices for reimbursement of transportation and protective service charges, if any, must be supported by the original or a copy of carrier's receipted freight bill or invoice. If shipment is by contract carrier, the Contractor's invoice must also be supported by a copy of the contract between the Contractor and the truck or rail line showing the schedule of rates, or a copy of the truck or rail line's published rates.

(b) Invoices for payment of freight charges, billed by the transportation companies, must be submitted to the Traffic Management Division, Kansas City Commodity Office. Invoices must contain the applicable Notice to Deliver number to be considered a proper invoice.

(c) When the total quantity to be invoiced includes a fraction of a pound, the fraction should be omitted if less than one-half pound and raised to the next full pound if one-half pound or more. Only whole pounds should be shown on the invoice. Contractor may include more than one shipment on any invoice.

(d) It is mutually agreed and understood that in submitting an invoice, the Contractor thereby certifies that all requirements of the contract have been satisfied and the Contractor has complied fully with the representations, certifications, and warranties set forth in Part C of USDA-1. Submission of an invoice when all contract terms and conditions have not been satisfied may subject Contractor to civil and criminal penalties as provided in Titles 15, 18, and

31 of the United States Code. The Agency will make payment to the Contractor (or the assignee if an assignment is made pursuant to Article 69) of any amounts due with respect to each shipment invoiced.

(e) The payment is due after receipt by the Fiscal Division, Kansas City Commodity Office, of a properly prepared invoice with the required supporting documents as follows:

(1) Within 7 days on purchase contracts for the acquisition of meat, meat food products or edible fresh or frozen poultry meat, perishable poultry meat products, fresh eggs or perishable egg products.

(2) Within 10 days on purchase contracts for the acquisition of dairy products, fresh and frozen fruits and vegetables, edible fats or oils, and food products prepared from edible fats or oils.

(3) Within 30 days on all other contracts including processing contracts where Government-owned commodities are processed into end products.

(f) If payment is not made within the specified number of calendar days following receipt of a proper invoice, then interest will be paid on the unpaid amount. Interest will accrue beginning on the first day after the payment due date through the date the Agency issues a check or otherwise delivers payment. Interest will be added to the amount payable on the invoice.

(g) Interest will be paid at a rate of interest that is equal to the rate of interest established by the Secretary of the Treasury for payment of interest penalties under the Prompt Payment Act. Interest is computed using the rate in effect on the day the agency first accrues an obligation to pay interest. Interest in the amount less than \$1.00 (one dollar) will not be paid.

(h) If a gross billing weight is shown in the offer and is to be considered in determining which offers are most advantageous to Agency, and if the gross billing weight as shown in the offer differs from that shown on the carrier's bill of lading, the Agency will require payment by Contractor for any excess transportation charges based upon the weight differences. Any savings will accrue to Agency.

Article 71. PROGRESS PAYMENTS NOT INCLUDED

A progress payments article is not included. Bids conditioned upon inclusion of a progress payment clause in the resulting contract will be rejected as nonresponsive.

Article 72. EXTRAS

Except as otherwise provided in the contract, no payment for extras shall be made unless such extras and the price therefor have been authorized in writing by the Contracting Officer.

Article 73. SETOFF

(a) Subject to the provisions of paragraphs (b) respecting assignments and (c) respecting liens, if Contractor is indebted to Agency, the amount of such indebtedness may be set off against the proceeds of the contract. If Contractor is indebted to the United States for taxes and notice of lien has been filed in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323) or any amendments thereof or modifications thereof or Notice of Levy has been served on USDA in accordance with the provisions of the Internal Revenue Code (26 U.S.C.

6331) against money payable to Contractor, or if Contractor is indebted to any other agency of the United States, the amount of such taxes or debt may likewise be set off; and, if Agency is CCC, such setoff shall be in accordance with 7 CFR Part 1408.

(b) Where an assignment has been made as provided in Article 69, the following provisions with respect to setoff shall apply:

(1) Notwithstanding the assignment, Agency may set off:

(i) Any amounts due Agency under the contract;

(ii) Any amounts for which Contractor is indebted to the United States for taxes for which a notice of lien was filed or a Notice of Levy was served in accordance with the provisions of the Internal Revenue Code of 1954 (26 U.S.C. 6323), or any amendments thereto or modifications thereof, before acknowledgement by Agency or receipt of the notice of assignment; and

(iii) Any amounts, other than amounts specified in (i) and (ii) of this paragraph (1) due Agency or any other agency of the United States, if Agency notified the assignee of such amounts to be set off at the time acknowledgement was made of receipt of notice of such assignment.

(2) Any indebtedness of Contractor to any agency of the United States which cannot be set off under subparagraph (1) of this paragraph may be set off against any amount payable under the contract which remains after deduction of amounts (including interest and other charges) owing by Contractor to the assignee for which the assignment was made.

(c) Any amount due prior lien holders who have not executed a waiver shall be deducted prior to setoff of any indebtedness referred to in paragraph (a) of this Article. If a waiver of lien has been executed, and if the holder of the lien is named by Contractor as payee on invoices or as assignee of claims for monies due under the contract to Contractor, any indebtedness to any agency of the Government under any transaction not under the contract may be set off against any amount due and payable under the contract which is in excess of the amount of such invoices or assignment.

(d) Setoff as provided in the Article shall not deprive Contractor of any right it might otherwise have to contest the justness of the indebtedness involved in the setoff action either by administrative appeal or by legal action.

Article 74. DISPUTES

(a) This contract is subject to the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this Article.

(c) "Claim," as used in this article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract Article that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this article, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000, the Contractor shall submit with the claim a certification that--

- (i) The claim is made in good faith;
- (ii) Supporting data are accurate and complete to the best of the Contractor's knowledge and belief; and
- (iii) The amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification shall be executed by--

- (A) A senior company official in charge at the Contractor's plant or location involved; or
- (B) An officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

Article 75. FRAUDULENT CLAIMS

(a) Section 5 of the Contract Disputes Act of 1978 (41 U.S.C. 601, 604) provides that if a Contractor is unable to support any part of its claim under the contract and such inability is attributable to misrepresentation of fact or fraud on the part of the Contractor, it shall be liable to the Government for:

- (1) an amount equal to the unsupported part of the claim; and
- (2) costs to the Government attributable to reviewing that part of the claim.

(b) "Misrepresentation of fact," is defined by the Contract Disputes Act of 1978 as a false statement of substantive fact, or any conduct which leads to a belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

(c) All instances of suspected fraudulent claims shall be reported, through channels, to the Attorney General.

Article 76. AUDIT OF RECORDS AND ACCESS TO PREMISES (DEVIATION)

(a) Contractor agrees that Agency and the Comptroller General of the United States through their duly authorized representatives shall, until the expiration of three years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers and records on Contractor involving transactions relating to the contract.

(b) **Availability.** The Contractor shall make available at its office at all reasonable times the materials described in paragraph (a) above, for examination, audit, or reproduction, until 3 years after final payment under this contract, or for any other period specified in the Federal Acquisition Regulation (FAR), Title 48, C.F.R. Subpart 4.7. FAR Subpart 4.7, Contractor Records Retention, in effect on the date of this contract, is incorporated by reference in its entirety and made a part of this contract.

(1) If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.

(2) Records pertaining to appeals under the Disputes article or to litigation or the settlement of claims arising under or relating to the performance of this contract shall be made available until disposition of such appeals, litigation, or claims.

(c) The Contractor shall insert a article containing all the provisions of this article, including this paragraph (c), in all subcontracts over \$10,000 under this contract, altering the article only as necessary to identify properly the contracting parties and the contracting office under the Government prime contract.

Article 77. GRATUITIES

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative--

(1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and

(2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) above, the Government is entitled to pursue the same remedies as in a breach of the contract.

(d) The rights and remedies of the Government provided in this article shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

Article 78. INTEREST

(a) Notwithstanding any other article of this contract, all amounts that become payable by the Contractor to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code (26 U.S.C. 1481)) shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, as provided in paragraph (b) of this Article, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

- (b) Amounts shall be due at the earliest of the following dates:
- (1) The date fixed under this contract.
 - (2) The date of the first written demand for payment consistent with this contract, including any demand resulting from a default termination.
 - (3) The date the Government transmits to the Contractor a proposed supplemental agreement to confirm completed negotiations establishing the amount of debt.
 - (4) If this contract provides for revision of prices, the date of written notice to the Contractor stating the amount of refund payable in connection with a pricing proposal or a negotiated pricing agreement not confirmed by contract modification.
- (c) The interest charge made under this article may be reduced under the procedures prescribed in the Federal Acquisition Regulation, Title 48, C.F.R. 32.614-2 in effect on the date of this contract.

Article 79. NOTICE TO THE GOVERNMENT OF LABOR DISPUTES

- (a) If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract, the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.
- (b) The Contractor agrees to insert the substance of this article, including this paragraph (b), in any subcontract to which a labor dispute may delay the timely performance of this contract; except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the subcontractor shall immediately notify the next higher tier subcontractor or the prime Contractor, as the case may be, of all relevant information concerning the dispute.

Article 80. LIQUIDATED DAMAGES - SMALL BUSINESS SUBCONTRACTING PLAN

- (a) "Failure to make a good faith effort to comply with the subcontracting plan," as used in this Article, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under Article 28 of USDA-1 entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," or willful or intentional action to frustrate the plan.
- (b) If, at contract completion, or in the case of a commercial products plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this Article that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with Article 28 of USDA-1 entitled "Small Business and Small Disadvantaged Business Subcontracting Plan," the Contractor shall pay the Government liquidated damages in an amount stated. The amount of damages attributable to the Contractor's failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal or, in the case of a commercial products plan, that portion of the dollar amount allocable to Government contracts by which the Contractor failed to achieve each subcontract goal.
- (c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made. Failure to respond to the notice may be taken as an admission that no valid explanation

exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this Article.

(d) With respect to commercial products plans, i.e., company-wide or division-wide subcontracting plans approved under paragraph (g) of Article 28 of USDA-1 entitled, "Small Business and Small Disadvantaged Business Subcontracting Plan," the Contracting Officer of the agency that originally approved the plan will exercise the functions of the Contracting Officer under this Article on behalf of all agencies that awarded contracts covered by that commercial products plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

Article 81. DRUG-FREE WORKPLACE

The drug-free workplace provisions of Article 35 are hereby incorporated as post award provisions.

Article 82. REQUIREMENT FOR CERTIFICATE OF PROCUREMENT INTEGRITY-MODIFICATION

(Applicable to contract modifications in excess of \$100,000.)

(a) Definitions. The definitions set forth in 48 C.F.R. 3.104-4 are hereby incorporated in this Article.

(b) The Contractor agrees that it will execute the certification set forth in paragraph (c) of this Article when requested by the Contracting Officer in connection with the execution of any modification of a contract.

(c) Certification. As required in paragraph (b) of this Article, the officer or employee responsible for the modification proposal shall execute the following certification:

CERTIFICATE OF PROCUREMENT INTEGRITY MODIFICATION

(1) I, [Name of certifier] am the officer or employee responsible for the preparation of this modification proposal and hereby certify that, to the best of my knowledge and belief, with the exception of any information described in this certification, I have no information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), (hereinafter referred to as "the Act"), as implemented in the FAR and USDA-1, occurring during the conduct of contract number _____ and modification number _____.

(2) As required by subsection 27(e)(1)(B) of the Act, I further certify that to the best of my

knowledge and belief, each officer, employee, agent, representative, and consultant of (Name of Offeror) who has participated personally and substantially in the preparation or, submission of this proposal has certified that he or she is familiar with, and will comply with, the requirements of subsection 27(a) of the Act, as implemented in the FAR and USDA-1, and will report immediately to me any information concerning a violation or possible violation of subsection 27(a), (b), (d), or (f) of the Act, as implemented in the FAR and USDA-1, pertaining to this procurement.

(3) Violations or possible violations: (Continue on plain bond paper if necessary and label Certificate of Procurement Integrity-Modification (Continuation Sheet), ENTER "NONE" IF NONE EXISTS) _____

(Signature) (date)

(Typed name of the officer or employee responsible for the modification proposal]

THIS CERTIFICATION CONCERNS A MATTER WITHIN THE JURISDICTION OF AN AGENCY OF THE UNITED STATES AND THE MAKING OF A FALSE, FICTITIOUS, OR FRAUDULENT CERTIFICATION MAY RENDER THE MAKER SUBJECT TO PROSECUTION UNDER THE UNITED STATES CODE (U.S.C.), INCLUDING TITLE 18 U.S.C., SECTION 1001 AND TITLE 15 U.S.C., SECTION 714m.

(d) In making the certification in paragraph (2) of the certificate, the officer or employee of the competing Contractor responsible for the offer or bid, may rely upon a one-time certification from each individual required to submit a certification to the competing Contractor, supplemented by periodic training. These certifications shall be maintained by the Contractor for a period of 6 years from the date a certifying employee's employment with the company ends or, for an agency, representative, or consultant, 6 years from the date such individual ceases to act on behalf of the Contractor.

(e) The certification required by paragraph (c) of this Article is a material representation of fact upon which reliance will be placed in executing this modification.

Article 83. PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY

(a) The Government, at its election, may reduce the price of a fixed-price type contract or contract modification by the amount of profit or fee determined as set forth in paragraph (b) of this Article if the head of the contracting activity or his or her designee determines that there was a violation of subsection 27(a) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in the FAR and USDA-1.

(b) The price or fee reduction referred to in paragraph (a) of this Article for firm-fixed price contracts or contract modifications will be 10 percent of the initial contract price; 10 percent of the contract modification price; or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award or modification.

(c) The Government may, at its election, reduce a prime Contractor's price or fee in accordance with the procedures of paragraph (b) of this Article for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

(d) In addition to the remedies in paragraphs (a) and (c) of this Article, the Government may

terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

Article 84. [Reserved]

**PART E - ADDITIONAL STANDARD CONTRACT PROVISIONS FOR SERVICING
OF AGENCY-OWNED COMMODITIES**

Article 85. PERFORMANCE SECURITY

Within 10 days after acceptance of the offer, Contractor shall furnish a surety bond acceptable to Agency conditioned on its faithful performance of each and all of the provisions of the contract, or, in lieu of such bond, a certified or cashier's check or other acceptable security, including an irrevocable commercial letter of credit, acceptable to Agency. Such bond or security shall be in the amount specified in the contract, and shall be payable to Agency. Failure to furnish such performance security within such time is a failure of performance under the provisions of Article 68.

**Article 86. F.O.B. POINT FOR DELIVERY OF GOVERNMENT-FURNISHED PROPERTY
(DEVIATION)**

(a) Unless otherwise specified in the solicitation, any Government property furnished to the Contractor for use within the United States (excluding Alaska and Hawaii) or Canada will be delivered by the Government at a point to be specified by the Contractor in the offer. Should the Government elect to make delivery by railroad, the f.o.b. point shall be private siding, Contractor's plant. If the Contractor's plant is not served by rail, the f.o.b. point shall be railroad cars in the same or nearest city having rail service. All line-haul transportation costs to the specified destination shall be borne by the Government. Any other charges, including unloading and drayage to Contractor's plant are for the account of the contractor. The Government may choose the mode of transportation and the carriers.

(b) If the destination of such Government-furnished property is a Contractor's plant located outside the 48 contiguous states, the District of Columbia or Canada, the f.o.b. point for Government delivery of Government-furnished property shall be a location in the United States (excluding Alaska and Hawaii) specified by the Contractor. If the Contractor fails to name a point, then the f.o.b. point shall be the port city in the United States nearest to the Government source of the Government-furnished property that has regular commercial water transportation services to the offshore port nearest Contractor's plant.

(c) Unless otherwise directed by the Contracting Officer or provided in the contract, the Contractor shall return all Government-furnished equipment, supplies, and property, including all property not returned in the form of acceptable end items, to the point at which the Government property was originally furnished to the Contractor under the contract. Notwithstanding the fact that the Government may have furnished the property at the Contractor's plant, the Contracting Officer may direct the Contractor to deliver the Government property being returned to, and load, block, and brace it in, railway cars in the city in which the Contractor's plant is located, or, if the Contractor's city is not served by rail service, in the nearest city having rail service. Unless otherwise specified in the contract, all property shall be packed in containers conforming with the rules of common carrier published tariffs so as to be free of penalty charges by the carrier designated for shipment by the Government.

(d) Contractor shall submit promptly to the carrier and Agency a detailed written report of any overage, shortage, or damage noted at the time of unloading or transfer. The report shall contain, but not be limited to, the following information:

- (1) The seal numbers on the conveyance when it is placed for unloading.

(2) The condition of the seals when the conveyance was placed for unloading, whether broken, or intact.

(3) The condition of the conveyance at the time it was placed for unloading, such as leaks, loose drainage valves, etc.

(e) The agricultural commodity delivered by Agency shall be of a quality that will permit Contractor to produce a serviced commodity meeting the specifications required by the contract. If Contractor has reason to believe the agricultural commodity received from Agency is not of such quality, it shall immediately notify Agency of the reasons for such belief and request advice regarding action to be taken by him/her, unless the contract contains a provision prescribing the action to be taken by Contractor in such event. Any such notice by telephone shall be confirmed promptly in writing by Contractor.

Article 87. RESTRICTION AGAINST SUBSTITUTION

Since title to the agricultural commodity delivered by Agency is at all times vested in Agency while such commodity is in the custody of Contractor, Contractor shall not substitute any commodity owned by him/her for the agricultural commodity owned by Agency unless Agency agrees in writing and prescribes conditions for such substitution.

Article 88. DELIVERY TO AGENCY BY CONTRACTOR

(a) The quantity of serviced commodity which Contractor shall deliver to Agency shall not be less than the quantity, if any, specified in the contract, and in any event shall be all of the serviced commodity produced from the agricultural commodity delivered by Agency even though such quantity exceeds the quantity specified in the contract. Unless the contract provides otherwise, Contractor shall account to Agency for any quantity or portion of the agricultural commodity not serviced.

(b) The serviced commodity shall be delivered by Contractor in the manner (f.o.b. car or truck, at option of Agency) and at the point(s) of delivery specified in the contract. If the contract provides for delivery f.o.b. cars at Contractor's plant or warehouse and such plant or warehouse is not located on a railroad, the point(s) of delivery shall, at the option of Agency, be any place in the city where the plant or warehouse is located, or f.o.b. cars at the railroad delivery point customarily used by Contractor. All costs to deliver the serviced commodity to the delivery point required in the contract shall be for the account of the Contractor.

(c) Immediately on shipment, Contractor shall, in accordance with instructions from Agency, notify Agency or consignee or both of the shipment.

(d) Subject to the provisions in Article 55(c), and the right of rejection as provided in Article 60, risk of loss shall pass to Agency on delivery of the serviced commodity to Agency.

Article 89. CARRIER ACCESSORIAL CHARGES

Contractor agrees to pay any demurrage and protective service charges which may accrue on shipments of the agricultural commodity because of failure to unload such commodity within the free time period allowed by carrier after delivery to Contractor as provided in Article 86. Contractor also agrees to pay any demurrage and protective service charges which may accrue on cars ordered by Contractor and placed for loading, but not loaded and delivered to carrier

within free time allowed by carrier. In placing orders with carrier for cars, Contractor agrees to specify appropriate size cars necessary to obtain lowest freight rate. Any excess charges resulting from failure of Contractor to so specify shall be for account of Contractor.

Article 90. TRANSIT

Contractor shall maintain transit records and render reports in accordance with the rules of the Weighing and Inspection Bureau governing the transit point. Contractor shall furnish Agency such transit data as may be requested from time to time. Application of transit on outbound movements will be as directed by Agency with documentation in accordance with the rules of the local Weighing and Inspection Bureau.

Article 91. LIABILITY

(a) Contractor shall be liable for loss, damage, destruction, or deterioration from any cause whatsoever of the agricultural commodity received from Agency until the serviced commodity has been delivered to Agency in accordance with provisions of the contract or the agricultural commodity or serviced commodity has been removed by Agency from Contractor's custody.

(b) Any insurance carried by Contractor covering the agricultural commodity or serviced commodity shall accrue to benefit of Agency and any collection shall be by and at the expense of Contractor. Failure of Contractor to collect full value from any insurer shall not relieve Contractor of liability for the full amount of damages sustained by Agency.

Article 92. AGENCY'S DELAY AND OTHER FAILURE TO PERFORM

If, due to causes beyond the control and without the fault or negligence of Agency, Agency is unduly delayed or is unable to deliver to Contractor for servicing all or any part of the agricultural commodity which Contractor has contracted to service, Agency shall not be required to deliver or replace such commodity and shall be liable only for the cost (including transportation and handling costs) of containers and packaging materials purchased by Contractor for use in performance of the contract: Provided, that Contractor delivers such containers and packaging materials to Agency.

Article 93. PERFORMANCE REPORT

Contractor shall prepare a Form ASCS-11, "Performance Report," as of the close of business each day when the agricultural commodity is received, processed or packaged or the serviced commodity is shipped. The original and one copy of this report signed by a representative of Contractor and an inspector shall be mailed promptly to the ASCS Management Office. Three copies of the report will be retained by the inspector. Form ASCS-11 will be supplied to the Contractor by Agency.

Article 94. SERVICE CONTRACT ACT OF 1965, AS AMENDED

All contracts entered into by the United States or the District of Columbia, in excess of \$2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees are subject to the following provisions:

(a) Service Contract Act of 1965, as amended: This contract is subject to the Service Contract Act of 1965, as amended (41 U.S.C. 351 et seq.) and is subject to the following provisions and to all other applicable provisions of the Act and regulations of the Secretary of Labor issued thereunder (29 CFR Part 4).

(b) (1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this contract.

(2) (i) If there is such a wage determination attached to this contract, the Contracting Officer shall require that any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination), be classified by the Contractor so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this section. (The information collection requirements contained in the following paragraphs of this section have been approved by the Office of Management and Budget under OMB control number 1215-0150.)

(ii) Such conforming procedure shall be initiated by the Contractor prior to the performance of contract work by such unlisted class of employee. A written report of the proposed conforming action, including information regarding the agreement or disagreement of the authorized representative of the employees involved or, where there is no authorized representative, the employees themselves, shall be submitted by the Contractor to the Contracting Officer no later than 30 days after such unlisted class of employees performs any contract work. The Contracting Officer shall review the proposed action and promptly submit a report of the action, together with the Agency's recommendation and all pertinent information including the position of the Contractor and the employees, to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, for review. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv) (A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage

rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of the contract modification, an exercise of an option or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to this section, a new conformed wage rate and fringe benefits may be assigned to such conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in paragraph (b)(2)(ii) of this section need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined pursuant to paragraphs (b)(2)(i) and (ii) of this section shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay such unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Act and this contract.

(vi) Upon discovery of failure to comply with paragraphs (b)(2)(i) through (v) of this section, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class of employees commenced contract work.

(3) If, as authorized pursuant to section 4(d) of the Service Contract Act of 1965 as amended, the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees shall be subject to adjustment after 1 year and not less often than once every 2 years, pursuant to wage determinations to be issued by the Wage and Hour Division, Employment Standards Administration of the Department of Labor as provided in such Act.

(c) The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined conformably thereto by furnishing any equivalent combinations of bona fide fringe benefits, or by making equivalent or differential payments in cash in accordance with the applicable rules set forth in Subpart D of 29 CFR Part 4, and not otherwise.

(d) (1) In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under the contract (regardless of whether they are service employees) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this provision shall relieve the Contractor or any subcontractor of any other obligation under law or contract for the payment of a higher wage to any employee.

(2) If this contract succeeds a contract, subject to the Service Contract Act of 1965 as amended, under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any

subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreements, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 4.1b(b) of 29 CFR Part 4 apply or unless the Secretary of Labor or his authorized representative finds, after hearing as provided in 4.10 of 29 CFR Part 4 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 4.11 of 29 CFR Part 4, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's-length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Board of Service Contract Appeals, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract, 53 Comp. Gen. 401 (1973). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(e) The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of section 2(a)(4) of the Act and of this contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(f) The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary or hazardous or dangerous to the health or safety of service employees engaged to furnish these services, and the Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(g) (1) The Contractor and each subcontractor performing work subject to the Act shall make and maintain for 3 years from the completion of the work records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each employee subject to the Act and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration of the U.S. Department Of Labor. (Sections 4.6(g)(1)(i) through (iv) approved by the Office of Management and Budget under OMB control number 1215-0017 and sections 4.6(g)(1)(v) and (vi) approved under OMB control number 1215-0150.):

(i) Name and address and social security number of each employee.

(ii) The correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee.

(iii) The number of daily and weekly hours so worked by each employee.

(iv) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(v) A list of monetary wages and fringe benefits for those classes of service employees not included in the wage determination attached to this contract but for which such wage rates or fringe benefits have been determined by the interested parties or by the Administrator or authorized representative pursuant to the labor standards clause in paragraph (b) of this section. A copy of the report required by the clause in paragraph (b)(2)(ii) of this section shall be deemed to be such a list.

(vi) Any list of the predecessor Contractor's employees which had been furnished to the Contractor pursuant to 4.6(1)(2).

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce such records, the Contracting Officer, upon direction of the Department of Labor and notification of the Contractor, shall take action to cause suspension of any further payment or advance of funds until such violation ceases.

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(h) The Contractor shall unconditionally pay to each employee subject to the Act all wages due free and clear and without subsequent deduction (except as otherwise provided by law or Regulations, 29 CFR Part 4), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Act may not be of any duration longer than semi-monthly.

(i) The Contracting Officer shall withhold or cause to be withheld from the Government prime Contractor under this or any other Government contract with the prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Act all or part of the wages or fringe benefits due under the Act, the Agency may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of these clauses relating to the Service Contract Act of 1965, may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(j) The Contractor agrees to insert these clauses in this section relating to the Service Contract Act of 1965 in all subcontracts subject to the Act. The term "Contractor" as used in these clauses in any subcontract, shall be deemed to refer to the subcontractor, except in the term "Government prime Contractor."

(k) (1) As used in these clauses, the term "service employee" means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in Part 541 of Title 29, Code of Federal Regulations, as of July 30, 1976, and any subsequent revision of those regulations.

The term "service employee" includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(2) The following statement is included in contracts pursuant to section 2(a)(5) of the Act as is for informational purposes only:

The following classes of service employees expected to be employed under the contract with the Government would be subject, if employed by the contracting Agency, to the provisions of 5 U.S.C. 5341 or U.S.C. 5332 and would, if so employed, be paid not less than the following rates of wages and fringe benefits:

EMPLOYEE CLASS: _____

MONETARY WAGE - FRINGE BENEFITS: _____

(1) (1) If wages to be paid or fringe benefits to be furnished any service employees employed by the Government prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance, such agreements shall be reported promptly after negotiation thereof. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(2) Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (4.173 of Regulations, 29 CFR Part 4), the incumbent prime Contractor shall furnish to the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract. (Approved by the Office of Management and Budget under OMB control number 1215-0150.)

(m) Rulings and interpretations of the Service Contract Act of 1965, as amended, are contained in Regulations, 29 CFR Part 4.

(n) (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Act.

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract pursuant to section 5 of the Act.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(o) Notwithstanding any of the clauses in paragraphs (b) through (m) of this section relating to the Service Contract Act of 1965, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor,

pursuant to section 4(b) of the Act prior to its amendment by Public Law 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical, or mental deficiency or injury may be employed at wages lower than the minimum wages otherwise required by section 2(a)(1) or 2(b)(1) of the Service Contract Act without diminishing any fringe benefits or cash payments in lieu thereof required under section 2(a)(2) of that Act, in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, handicapped persons, and handicapped clients of sheltered workshops under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the Service Contract Act for the employment of apprentices, student-learners, handicapped persons, or handicapped clients of sheltered workshops not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two acts, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in Parts 525 and 528 of Title 29 of the Code of Federal Regulations.

(p) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Bureau of Apprenticeship and Training, Employment and Training Administration, U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman's rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(q) An employee engaged in an occupation in which he or she customarily and regularly receives more than \$30 month in tips may have the amount of tips credited by the employer against the minimum wage required by section 2(a)(1) or section 2(b)(1) of the Act in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531: Provided, however, that the amount of such credit may not exceed \$1.24 per hour beginning January 1, 1980, and \$1.34 per hour after December 31, 1980. To utilize this proviso:

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Act minimum wage through the combination of direct wages and tip credit; (approved by the Office of Management and Budget under OMB control number 1215-0017);

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of section 4(c) of the Act.

(r) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Part 4, 6, and 8. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the Contracting agency, the U.S. Department of Labor, and the employees or their representatives.

Article 95. GOVERNMENT PROPERTY (FIXED-PRICE CONTRACTS)

(a) **Government-furnished property.** (1) The Government shall deliver to the Contractor, for use in connection with and under the terms of this contract, the Government-furnished property described in the Schedule or specifications together with any related data and information that the Contractor may request and is reasonably required for the intended use of the property (hereinafter referred to as "Government-furnished property").

(2) The delivery or performance dates for this contract are based upon the expectation that Government-furnished property suitable for use (except for property furnished "as-is") will be delivered to the Contractor at the times stated in the Schedule or, if not so stated, in sufficient time to enable the Contractor to meet the contract's delivery or performance dates.

(3) If Government-furnished property is received by the Contractor in a condition not suitable for the intended use, the Contractor shall, upon receipt of it, notify the Contracting Officer, detailing the facts, and, as directed by the Contracting Officer and at Government expense, either repair, modify, return, or otherwise dispose of the property. After completing the directed action and upon written request of the Contractor, the Contracting Officer shall make an equitable adjustment as provided in paragraph (h) of this article.

(4) If Government-furnished property is not delivered to the Contractor by the required time, the Contracting Officer shall, upon the Contractor's timely written request, make a determination of the delay, if any, caused the Contractor and shall make an equitable adjustment in accordance with paragraph (h) of this article.

(b) **Changes In Government-furnished property.** (1) The Contracting Officer may, by written notice, (i) decrease the Government-furnished property provided or to be provided under this contract, or (ii) substitute other Government-furnished property for the property to be provided by the Government, or to be acquired by the Contractor for the Government, under this contract. The Contractor shall promptly take such action as the Contracting Officer may direct regarding the removal, shipment, or disposal of the property covered by such notice.

(2) Upon the Contractor's written request, the Contracting Officer shall make an equitable adjustment to the contract in accordance with paragraph (h) of this article, if the Government has agreed in the Schedule to make the property available for performing this contract and there is any--

- (i) Decrease or substitution in this property pursuant to subparagraph (b)(1) above; or
- (ii) Withdrawal of authority to use this property, if provided under any other contract or lease.

(c) **Title in Government property.** (1) The Government shall retain title to all Government-furnished property.

(2) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government

property"), are subject to the provisions of this article. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(3) Title to each item of facilities, special test equipment, and special tooling (other than that subject to a special tooling clause) acquired by the Contractor for the Government under this contract shall pass to and vest in the Government when its use in performing this contract commences or when the Government has paid for it, whichever is earlier, whether or not title previously vested in the Government.

(4) If this contract contains a provision directing the Contractor to purchase material for which the Government will reimburse the Contractor as a direct item of cost under this contract--

(i) Title to material purchased from a vendor shall pass to and vest in the Government upon the vendor's delivery of such material; and

(ii) Title to all other material shall pass to and vest in the Government upon--

(A) Issuance of the material for use in contract performance;

(B) Commencement of processing of the material or its use in contract performance; or

(C) Reimbursement of the cost of the material by the Government, whichever occurs first.

(d) **Use of Government property.** The Government property shall be used only for performing this contract, unless otherwise provided in this contract or approved by the Contracting Officer.

(e) **Property administration.** (1) The Contractor shall be responsible and accountable for all Government property provided under this contract and shall comply with Federal Acquisition Regulation (FAR), Title 48, C.F.R. Subpart 45.5, as in effect on the date of this contract.

(2) The Contractor shall establish and maintain a program for the use, maintenance, repair, protection, and preservation of Government property in accordance with sound industrial practice and the applicable provisions of Subpart 45.5 of the FAR.

(3) If damage occurs to Government property, the risk of which has been assumed by the Government under this contract, the Government shall replace the items or the Contractor shall make such repairs as the Government directs. However, if the Contractor cannot effect such repairs within the time required, the Contractor shall dispose of the property as directed by the Contracting Officer. When any property for which the Government is responsible is replaced or repaired, the Contracting Officer shall make an equitable adjustment in accordance with paragraph (h) of this article.

(4) The Contractor represents that the contract price does not include any amount for repairs or replacement for which the Government is responsible. Repair or replacement of property for which the Contractor is responsible shall be accomplished by the Contractor at its own expense.

(f) **Access.** The Government and all its designees shall have access at all reasonable times to the premises in which any Government property is located for the purpose of inspecting the Government property.

(g) **Risk of loss.** Unless otherwise provided in this contract, the Contractor assumes the risk of, and shall be responsible for, any loss or destruction of, or damage to, Government property upon its delivery to the Contractor or upon passage of title to the Government under paragraph (c) of this article. However, the Contractor is not responsible for reasonable wear and tear to Government property or for Government property properly consumed in performing this contract.

(h) **Equitable adjustment.** When this article specifies an equitable adjustment, it shall be made

to any affected contract provision in accordance with the procedures of the Changes article. When appropriate, the Contracting Officer may initiate an equitable adjustment in favor of the Government. The right to an equitable adjustment shall be the Contractor's exclusive remedy. The Government shall not be liable to suit for breach of contract for--

- (1) Any delay in delivery of Government-furnished property;
- (2) Delivery of Government-furnished property in a condition not suitable for its intended use;
- (3) A decrease in or substitution of Government-furnished property; or
- (4) Failure to repair or replace Government property for which the Government is responsible.

(i) **Final accounting and disposition of Government property.** Upon completing this contract, or at such earlier dates as may be fixed by the Contracting Officer, the Contractor shall submit, in a form acceptable to the Contracting Officer, inventory schedules covering all items of Government property (including any resulting scrap) not consumed in performing this contract or delivered to the Government. The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of the Government property as may be directed or authorized by the Contracting Officer. The net proceeds of any such disposal shall be credited to the contract price or shall be paid to the Government as the Contracting Officer directs.

(j) **Abandonment and restoration of Contractor's premises.** Unless otherwise provided herein, the Government--

(1) May abandon any Government property in place, at which time all obligations of the Government regarding such abandoned property shall cease; and

(2) Has no obligation to restore or rehabilitate the Contractor's premises under any circumstances (e.g., abandonment, disposition upon completion of need, or upon contract completion). However, if the Government-furnished property (listed in the Schedule or specifications) is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this article may properly include restoration or rehabilitation costs.

(k) **Communications.** All communications under this article shall be in writing.

(1) **Overseas contracts.** If this contract is to be performed outside of the United States of America, its territories, or possessions, the words "Government" and "Government-furnished" (wherever they appear in this article) shall be construed as "United States Government" and "United States Government-furnished," respectively.

Article 96. FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT--PRICE ADJUSTMENT

(a) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this article.

(b) The contract price or contract unit price labor rates will be adjusted to reflect increases or decreases by the Contractor in wages or fringe benefits of employees working on this contract to comply with--

(1) An increased or decreased wage determination applied to this contract by operation of law; or

(2) An amendment to the Fair Labor Standards Act of 1938 that is enacted subsequent to award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(c) Any such adjustment will be limited to increases or decreases in wages or fringe benefits

as described in paragraph (b) above, and to the concomitant increases or decreases in social security and unemployment taxes and workers' compensation insurance; it shall not otherwise include any amount for general and administrative costs, overhead, or profits.

(d) The Contractor shall notify the Contracting Officer of any increase claimed under this article within 30 days after the effective date of the wage change, unless this period is extended by the Contracting Officer in writing. The Contractor shall promptly notify the Contracting Officer of any decrease under this article, but nothing in the article shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any relevant supporting data that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price or contract unit price labor rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(e) The Contracting Officer or an authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

Article 97. PROCUREMENT INTEGRITY-SERVICE CONTRACTING

(Applicable to contracts and contract modifications in excess of \$100,000.)

(a) Definitions. The definitions in 48 C.F.R. 3.104-4 are hereby incorporated in this Article.

(b) The Contractor shall establish a procurement ethics training program for its employees serving as procurement officials. The program shall, at a minimum--

(1) Provide for the distribution of written explanations of the provisions of section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423), as implemented in the FAR and USDA-1, to such employees; and

(2) Require each such employee, as a condition of serving as a procurement official, to certify to the Contracting Officer that he or she is familiar with the provisions of the Act, as implemented in the FAR and USDA-1, and will not engage in any conduct prohibited by subsection 27(a), (b), (d), or (f) of the Act, as implemented in the FAR and USDA-1, and will report immediately to the Contracting Officer any information concerning a violation or possible violation of the prohibitions.

(c) Pursuant to 48 C.F.R. 3.104-9(d), a Contractor employee who is serving as a procurement official may be requested to execute additional certifications.

(d) If a Contractor employee serving as a procurement official ceases performance of these duties during the conduct of such procurement expected to result in a contract or contract modification in excess of \$100,000, such employee shall certify to the Contracting Officer that he or she understands the continuing obligation, during the conduct of the agency procurement, not to disclose proprietary or source selection information related to such agency procurement.